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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ROBERT E. BADHAM, *et al.*,

Appellants,

v.

MARCH FONG EU, *et al.*,

Appellees.

Appeal From the United States District Court for the Northern District of California

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. Is a claim of unconstitutional gerrymandering of congressional districts barred by the fact that the plaintiffs' voting rights in another jurisdiction or level of government are not similarly affected?

2. Did the district court below err in effectively concluding that members of a major political party may never successfully maintain an action alleging unconstitutional political gerrymandering, thereby rendering this Court's decision in *Davis* v. *Bandemer* a nullity?

3. Did the district court err in refusing to recognize that the egregious discriminatory effects set forth in appellants' complaint far exceeded *Bandemer*'s requirement of more than a *de minimis* discriminatory effect on appellants' fundamental voting rights?

THE PARTIES

Appellants in this action are registered Republican voters and residents of California's congressional districts and include all members of the California Republican congressional delegation. Appellants include Robert E. Badham, Robert Naylor, Eric Seastrand, Aldo Silvestri, Michael W. Cobb, Frank O. Verlot, Donna S. Richardson, Peter Schrager, Jane Baker, Charles A. Meyer, Kirk Lindsey, Donald Driscoll, Roger T. Erickson, D.D.S., Cynthia Trobitz-Thomas, Lowell Landowski, Jack Hite, Mike Garza, Dennis McQuaid, Rosemary Thakar, Steve Eigenberg, David Williams, Michael Lacrone, Bob Nash, David Crevelt, Elton Gallegly, George Woolverton, Jerry Zerg, David Baird, Robert Kerns, Robert Scribner, George Adams, Carl Johnson, John W. Almquist, Jackson M. McMurray, Joyce Robertson, Charles House, Bob Henley, Wally Herger, Norman D. Shumway, Charles Pashayan, Jr., Robert J. Lagomarsino, William M. Thomas, Carlos J. Moorhead, David Dreier, Jerry Lewis, Al McCandless, Robert K. Dornan, William E. Dannemeyer, Bill Lowery, Daniel E. Lungren, Ron Packard, Bill Mitchell, and Duncan Hunter.

Appellee by virtue of her status as defendant in the case below is March Fong Eu, as Secretary of the State of California. Defendant-intervenors below and appellees here are the Assembly of the State of California and the twenty-seven Members of the California Democratic congressional delegation.

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JURISDICTIONAL STATEMENT

Appellants submit this statement particularly disclosing the basis upon which this Court has jurisdiction on appeal to review the judgment and decision of the United States District Court for the Northern District of California, sitting as a three-judge court.

OPINIONS BELOW

The memorandum opinion and order is set forth at pages 1a-24a of the Appendix ("App."). The concurring opinion is set forth at page 25a of Appendix A. The dissenting opinion has not been filed below but is expected shortly (App. A at 26a); appellants will file the dissenting opinion with the Court as soon as it is issued. The memorandum opinion and order has been ordered published, but has not yet appeared in the official reporter. The three-judge dis-

trict court produced three separate opinions. Circuit Judge Cecil Poole wrote the memorandum opinion; District Judge Alphonso Zirpoli wrote the concurring opinion, and District Judge Robert Schnacke dissented.

JURISDICTION

Appellants' complaint below sought preliminary and permanent injunctive relief against the enforcement of California's congressional redistricting statute, pursuant to 28 U.S.C. sections 1343(3) & (4), 42 U.S.C. sections 1983 and 1988, and 28 U.S.C. sections 2201 and 2202. A three-judge court was convened pursuant to 28 U.S.C. section 2284(a). The memorandum opinion and order of the three-judge court below, filed on April 21, 1988, granted a motion to dismiss the complaint with prejudice and denied any relief to appellants. Jurisdiction of this appeal is conferred on this Court by 28 U.S.C. section 1253.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case arises under: (a) article I, section 2, of the Constitution of the United States, which provides:

> The House of Representatives shall be composed of Members chosen every second Year by the people of the several States, and the electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature[;]

(b) Section 1 of the fourteenth amendment of the Constitution of the United States which provides in pertinent part: "No State shall make or enforce any law which will abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws;" (c) The first amendment of the Constitution of the United States which states in pertinent part: "Congress shall make no law . . . abridging the free-

dom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances;" and (d) article IV, section 4, of the Constitution of the United States which provides that "The United States shall guarantee to every State in this Union a Republican Form of Government,. . . ."

The text of A.B. 2X, the challenged congressional redistricting statute involved, is codified at California Elections Code 30030 *et seq.*, Stats. 1983, C.6, Sec. 3, 1st Ex. Sess.

STATEMENT OF THE CASE

This appeal follows the grant by a divided court below of the defendants' motion to dismiss with prejudice the appellants' Third Amended Complaint ("Complaint") on the ground "that plaintiffs are unable to state a federal constitutional claim." (App. A at 24a.) The court below took 16-1/2 months to rule on the motions to dismiss from the oral argument. This prompt appeal ensues.[1]

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[1] Appellants filed their original complaint below on March 4, 1983, alleging that the California congressional redistricting statute, Assembly Bill 2X ("A.B. 2X"), violated the federal Constitution and several state laws. Shortly thereafter, the California Democratic congressional delegation and California Assembly (without the knowledge or consent of its Republican members) were granted leave to intervene. The complaint raised federal equal protection, freedom of association, due process and one person, one vote challenges to A.B. 2X, and included several pendent state law claims. On June 20, 1983, the court granted intervenors' motion to abstain and stayed federal court proceedings until the state law issues were settled by the state courts. In December 1983 plaintiffs filed their Second Amended Complaint which raised only federal constitutional issues including that of partisan gerrymandering. (The pendent state claims were voluntarily dismissed.) Pursuant to agreement of the parties, the abstention order was vacated on June 21, 1985, and discovery was allowed to proceed. Three months later, on September 19, 1985, the district court again stayed all proceedings pending this Court's decision in *Davis v. Bandemer*, 106 S. Ct. 2797 (1986). This Court filed its decision in *Davis v. Bandemer* on June 30, 1986. *The next day* appellants asked the court below to vacate the stay and requested a status conference which was not convened until September 13, 1986. At the status conference the court continued its stay of

The allegations of the complaint, which are presumed true in determining the merits of a motion to dismiss,[2] are as follows:

The 1980 decennial census recorded a population gain in California entitling the state to 45 congressional seats, an increase of two seats. In September 1981, Assembly Bill 301 ("A.B. 301") was enacted as California's congressional redistricting statute for the 1980s. At the time, both houses of the California Legislature were controlled by Democratic party majorities and A.B. 301 was passed on party line votes and signed into law by then-Governor Edmund G. Brown, Jr., a Democrat. (Complaint section 9; App. C at 34a-35a.)

The process by which A.B. 301 was passed was aberrant and highly irregular. Republican legislators were totally excluded from the secretive, substantive work of designing the congressional district boundaries; the boundary lines were primarily drawn by or upon the recommendations of Democratic members of the California congressional delegation. No material hearing on the proposed district boundaries was held by any committee in either house of the Legislature. (Complaint section 10; App. C at 35a-36a.)

Shortly after passage, Californians who opposed A.B. 301 circulated and qualified referendum petitions by obtaining the signatures of over a million voters. This required that A.B. 301 be placed on the June 1982 statewide

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discovery, allowed appellants to file a Third Amended Complaint based on this Court's decision in *Davis v. Bandemer*, authorized defendants to file motions to dismiss and scheduled argument on the motions for December 5, 1986. Appellants repeatedly requested the court to act with speed, but to no avail. The opinion granting the motions to dismiss was not filed until April 21, 1988, some 16-1/2 months after oral argument. In the interim, appellants filed, on November 6, 1987, a Petition for Writ of Mandamus in the United States Court of Appeals for the Ninth Circuit, Action No. 87-7490, DC No. C-83-1126-RHS, seeking an order mandating the lower court to rule on the merits; the petition was pending at the time the opinion below was filed.

[2] *Conley v. Gibson*, 355 U.S. 41 (1957); 2A *Moore's Federal Practice*, para. 12.07 [2.-5] (1986 ed.).

ballot for voter approval or rejection. At that election, more than 60% of the voters rejected A.B. 301. Despite this clear expression of the electorate's will, the 1982 elections took place in the rejected A.B. 301 districts pursuant to order of a divided California Supreme Court. *Assembly* v. *Deukmejian*, 30 Cal. 3d 638 (1982). The A.B. 301 districts resulted in the election in November 1982 of 28 Democrats and 17 Republicans to Congress, a remarkable gain for Democrats (especially when Republicans were increasing in number) over their razor-thin 22 to 21 1980 edge. (Complaint section 11; App. C at 36a.)

The voters' rejection of A.B. 301 required the drawing of a new congressional redistricting plan for the 1984 elections. The California Legislature did not address this task until, at the November 1982 general election, Republican George Deukmejian won an upset victory and was to become Governor on January 2, 1983. Although the next congressional primary election was 19 months distant, Democratic Governor Brown ordered an extraordinary session of the California Legislature to convene on December 6, 1982. On that date, a proposed congressional redistricting bill, Assembly Bill 5X ("A.B. 5X"), was introduced; it was a bare vehicle bill which contained no description of any proposed congressional districts. Such descriptions, which consisted solely of long lists of geographic census units, were amended into the bill on the floor of the state Assembly late on December 27. Prior to that time, no Republican member of the Legislature was informed of the proposed district boundaries. A.B. 5X, as amended, passed the Assembly on December 28, 1982 on a party-line vote of 41 to 29. (Complaint section 12; App. C at 36a-37a.)

By the time A.B. 5X reached the state Senate on December 29, time was too short to permit its passage by the Senate, because article IV, section 8 of the California Constitution requires that a bill be read on three separate days in each legislative house prior to final passage. The Democratic majority solved this dilemma by utilizing Assembly Bill 2X ("A.B. 2X"), the state Board of Equali-

zation redistricting bill which had previously passed both houses of the Legislature and was sitting on the Governor's desk for signature. Early on December 29, in a highly unusual and remarkable procedural move, A.B. 2X was removed from the Governor's desk, returned to the Senate, and amended to add the congressional district descriptions of A.B. 5X. On the afternoon of that same day, A.B. 2X as amended was passed in the Senate on a strict party-line vote, 21 to ten. The bill was immediately returned to the Assembly and approved a few hours later, late in the evening of December 29, 1982, on a 41 to 29 party-line vote. The Legislature then adjourned and on Sunday, January 2, 1983, several hours before leaving office, Governor Brown signed A.B. 2X into law (*See*, App. D at 62a.) (Complaint section 16; App. C at 38a-39a.)

The only reason for processing A.B. 2X with such urgency was to prevent the incoming Republican Governor from participating in the redistricting process. The legislature's haste resulted in numerous errors in A.B. 2X of great consequence; many weeks after the bill was passed, the Democratic chairman of the Assembly Elections and Reapportionment Committee ordered staff to prepare 21 corrections to A.B. 2X which were transmitted to and implemented by the Democratic Secretary of State two months after the bill was signed into law. No Republican legislator was informed of the corrections, which shifted approximately 38,000 California citizens among various districts. (Complaint sections 17-18; App. C at 34a-40a.)[3]

A.B. 2X carves up the state of California so as to allocate congressional districts to Democrats in numbers far in excess of their voting strength, with the effect of controlling and distorting the composition of California's

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[3] As passed and enacted, A.B. 2X contained unconstitutional population deviations which were challenged in one of the causes of action in the appellants' original complaint filed on March 4, 1983. On March 17, 1983, the 21 corrections (which had already been executed by the Democratic Secretary of State) were made public; they effectively eliminated appellants' population-based claim. Shortly thereafter, appellants filed a first amended complaint to account for the Secretary's actions.

congressional delegation throughout the 1980s. The voter-rejected districts of A.B. 301 were the building blocks for the A.B. 2X districts and are comparable in partisan impact. A.B. 2X merely fine tunes the partisan impacts of A.B. 301 by reinforcing electoral advantages bestowed on Democrats with information gained from the 1982 election results. (Complaint sections 19-20; App. C at 40a-41a.)

The craftsmen of A.B. 2X employed sophisticated computer technology to refine gerrymandering methodology to dismantle, merge, and distort Republican voting strength and dilute and persistently degrade Republican votes both statewide and district by district throughout the decade. The Legislature, in crafting A.B. 2X, intended to enhance Democratic voting strength and electoral opportunities in the House of Representatives to the detriment of Republican voters and candidates. (Complaint sections 20-21; App. C at 41a.)

The gerrymander: (a) Arbitrarily eliminated three incumbent Republican members of Congress by placing multiple Republican incumbents in the same new district. In contrast, no 1980 Democratic incumbent had another Democratic incumbent placed in his or her district; (b) Deprived Republican incumbents of large portions of their former constituencies and fragmented concentrations of Republican voting strength among two or more districts; (c) "Awarded" California's two new congressional seats to Democrats by manipulating district boundaries to create Democratic voting advantages and minimize competition in those districts; (d) Reduced Republican voting strength in marginally competitive districts by removing Republican voters or adding Democratic voting strength; (e) Preserved old district lines and core voting strength for Democratic incumbents; (f) Packed Republican voters into congressional districts greatly in excess of the percentage needed to elect a candidate of their choice, thus wasting and diluting Republican votes; and (g) Virtually guaranteed immutable election results and a 27 to 18 majority in the California congressional delegation throughout the 1980s. (Complaint section 21; App. C at 41a-44a.)

The shapes and configurations of the A.B. 2X districts deviate substantially from objective criteria and cannot be justified or explained except as indicia of deliberate and invidious partisan gerrymandering. The district boundaries twist and wind their way across the state map to fragment or pack far-flung pockets of Republican voting strength in order to limit Republican opportunities for electoral success. (Complaint section 22; App. C at 44a.) This is because the drafters of A.B. 2X knew there are identifiable groups of California voters whose voting behavior is constant and can be ascertained from past elections and predicted in future elections. Republican voting strength, including registered Republicans and those who tend to vote for Republican candidates, can be so ascertained and predicted. The geographical distribution of Republican voters in California could be and was taken into account in drawing the congressional district boundaries of A.B. 2X (Complaint sections 2-3; App. C at 33a). The district boundaries defy description (See maps, App. D at 77a-169a.)

The A.B. 2X districts likewise violate numerous political boundary lines of cities and counties in order either to dilute Republican voting strength or to create Democratic districts.

A.B. 2X has also eliminated electoral competition in California's congressional races, and perpetuated a Democratic majority in the state's delegation to Congress. The November 1984 congressional elections under A.B. 2X saw 50.1% of the two-party vote cast for Republican candidates versus 49.9% for Democratic candidates, but the gerrymander resulted in Republicans winning only 18 (40%) of the congressional seats compared with 27 (60%) for Democrats. Thus, even though Republican congressional candidates received *more* of the two-party vote than did the Democrats, they received *far fewer* seats.[4] In 1984, no

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[4] Of California's 45 seats, the one that changed hands in 1984 was district 38, consisted of large portions of Orange County with unique circumstances. Robert Dornan, a well-known 1980 Republican incumbent from old district 27, which was dismantled in A.B. 301, ran and

congressional races were decided by less than eight percentage points and only two congressional races were decided by less than ten percentage points. Eight races were decided by margins greater than 50%, 13 by margins greater than 40%, nine by margins greater than 30%, ten by margins greater than 20% and three by margins greater than 10%. (Complaint sections 26,28; App. C at 47a-50a.)

The lack of competition in the 1986 elections was even more pronounced. Because of appellants' confidence that the results of the gerrymander are so predictable, the Complaint (filed on October 1, 1986) requested the court below to take judicial notice of the November 1986 congressional elections. (Complaint section 27; App. C at 49a.) Those election results again demonstrated the effect of the gerrymander. (*See* App. G at 200a.) All 45 members of Congress were reelected and no race was remotely competitive. The closest election (district 38) was won with a margin of 12.9% of the the vote. Because of the gerrymander, the partisan composition of the California congressional delegation throughout the 1980s will remain immutable. The gerrymander becomes more effective with each passing year. (Complaint sections 26-7; App. C at 47a-49a.)

The bizarre district configurations of A.B. 2X cause voter confusion and apathy, make it difficult to recruit effective challengers, increase the difficulty and expense of campaigning, and thereby entrench incumbent advantage. This lock-in of the gerrymander frustrates the reasonable hope of Republican voters to effectuate changes in public policy through the election of persons who share similar beliefs. (Complaint sections 24,28; App. C at 46a, 50a.)

A.B. 2X allocates a substantial and permanent majority of congressional seats to Democratic party candidates in percentages far superior to the statewide voting strength of Democratic voters, thereby maximizing the efficiency of Democratic votes and wasting Republican votes. The

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won in new district 38 after moving his home there. His margin of victory was eight percentage points, the closest of any A.B. 2X district.

craftsmen of A.B. 2X carved California up into 45 congressional districts so as to preordain the partisan makeup of California's delegation to the United States House of Representatives. The gerrymander allows this to occur despite the fact that the relative two-party voting strength is, at a minimum, equal and growing more Republican with each passing election. Virtually every Democratic incumbent is insulated from effective electoral opposition throughout the decade and thus from the need to be responsive to, or representative of, the shifting opinions and convictions of California voters. (Complaint section 26; App. C at 47a-49a.)

A.B. 2X substantially disadvantages Republican voters in their opportunity to influence effectively the election of members of the United States House of Representatives and discriminates against Republican voters by purposefully diluting, minimizing, or cancelling out their votes and voting strength statewide and in individual districts across the state. (Complaint sections 3, 20 & 29; App. C at 33a, 41a & 50a.) A.B. 2X is one of the most if not the most egregious partisan gerrymander of the 1980s.[5] Its boundaries are arbitrary, capricious, and not necessary to advance any legitimate state policy. (Complaint section 30; App. C at 51a.)

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[5] The literature of the political science, statistical and geographic communities strongly supports the conclusion that A.B. 2X is the most egregious example of blatant gerrymandering of the 1980s. *See, e.g.*: Robertson, *American Redistricting in the 1980s: The Effect on the Midterm Elections*, 2 Electoral Studies 113, 129 (1983) ("California serves as a textbook example of a successful partisan gerrymander. . . ."); Schwab, *The Impact of 1980 Reapportionment in the United States*, 4 Pol. Geog. Quarterly 141, 151 & 155 (1985) ("The most important gerrymandering in the country occurred in California."); Bullock, *The Inexact Science of Congressional Redistricting*, 15 PS 431, 437 (1982) (". . . most visibly and blatantly, California. . . ."); Ehrenhalt, *Reapportionment and Redistricting* in The American Elections of 1982, 44 at 48-9 & 57-8 (T. Mann and N. Ornstein, eds., 1982) (". . . much larger scale [than the plan challenged in Indiana]"); Cain, *Assessing the Partisan Effects of Redistricting*, 79 Amer. Pol. Sci. Rev. 320, 330-31 (1985) ("With the new incumbents in place, the situation . . . shows the almost perfect inefficiency [of the Republican vote]").

THE QUESTIONS ARE SUBSTANTIAL

I. THE COURT BELOW ERRONEOUSLY CONCLUDED THAT MEMBERS OF MAJOR POLITICAL PARTIES CANNOT MAKE A SUCCESSFUL CLAIM OF POLITICAL GERRYMANDERING.

A. The Court Below Has Distorted *Davis* v. *Bandemer* to Mean Egregious Political Discrimination in Drawing Congressional Districts Is Permissible Unless it Affects a Group of Voters' Influence on all Levels of the Political Process.

The court below has either seriously misread or simply refused to follow *Davis* v. *Bandemer*, 106 S. Ct. 2797 (1986) ("*Bandemer*"). The *Bandemer* plurality set forth two elements to an equal protection claim—discriminatory intent and effect.[6] The district court correctly recognized that appellants have clearly alleged a discriminatory intent. *Badham* v. *Eu* ("*Badham*"), No. C-83-1125 RHS, slip op. at 12 (N.D. Cal. Apr. 21, 1988) (App. A at 11a). The court did not and could not dispute appellants' allegations that A.B. 2X was consciously designed and implemented to dilute Republican voting strength.

The court below, however, failed to correctly apply *Bandemer*'s requirement of discriminatory effect. In evaluating the second element of the equal protection claim—discriminatory effect—the district court relied almost exclusively on this Court's statement in *Bandemer* that:

> [U]nconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole.

Bandemer, 106 S. Ct. at 2810.

We submit that the district court grievously misunderstood the meaning of this statement and interpreted it

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[6] The district court concluded that, on the basis of *Bandemer* and *Wesberry* v. *Sanders*, 376 U.S. 1 (1964), claims of egregious congressional gerrymandering are properly justiciable.

inconsistently within the context of the entire plurality opinion. Instead of focusing its inquiry on the congressional electoral process in California, the court below incredibly shifted its attention to Republican electoral successes statewide and nationally:

> California has a Republican governor, and one of its two senators is a Republican. Given also that a recent former governor of California has for seven years been President of the United States, *we see the fulcrum of political power to be such as to belie any attempt of plaintiffs to claim that they are bereft of the ability to exercise potent power* in 'the political process as a whole' because of the paralysis of an unfair gerrymander.

Badham, slip op. at 19 (App. A at 19a) (emphasis added).

Thus, the court below inexplicably concluded that appellants' right to fair and effective representation in Congress is irrelevant. It is clear, however, from the context of this Court's opinion in *Bandemer* that the electoral system to which this Court refers is not the whole national political process or even a whole state's political process. Rather, it is the political process directly involving or resulting in election to the offices which are the focus of appellants' complaint—Congress and congressional districts.

The district court incorrectly interpreted *Bandemer* as requiring a "threshold showing" that California Republicans have been "shut out" of "the political process as a whole." *Badham*, slip op. at 14, (App. A at 12a-13a). Seizing on these few words, the district court construed them out of context to mean that if Republican voters can elect candidates to statewide office (which, by definition, cannot be gerrymandered), then they have not been "shut out" and their right to vote for, and to fair and effective representation in, Congress is irrelevant under the equal protection clause.

The district court failed to understand that the political success of Republicans in non-gerrymandered statewide

elections in California is an indicium of the harshness of A.B. 2X's discriminatory effects, rather than an excuse for a gerrymander. Appellants have alleged, and the experience of congressional elections in California indisputably demonstrates, that the ability of Republicans to "effectively influence the political process" of the election of members of Congress from California has been dramatically diminished. A.B. 2X arranges the congressional electoral system in a manner that has consistently denigrated, and will continue to denigrate, Republican voters' influence on the political process in the House of Representatives. By focusing on statewide elections rather than the congressional elections at issue in the complaint, Judge Poole simply misread *Bandemer*.

B. The Relevant Inquiry under *Bandemer* Is the Extent to which There Is Discrimination in Congressional Districting.

In voting rights cases—whether involving racial discrimination or population distortions—this Court has historically focused its principal inquiry on the jurisdiction at issue. The district court's determination that a group's political success at one level of government bars that group from successfully proving vote dilution and discrimination in other levels of government defies both common sense and this Court's jurisprudence.

Taken to its logical conclusion, the district court's reasoning would suggest that, once a group achieves some degree of political success, constitutional protections for that group evaporate. Does the political success of Mayor Thomas Bradley in Los Angeles mean that the equal protection clause no longer protects black voters from the racial gerrymandering of city council districts? Do the successes of presidential candidate Jesse Jackson diminish constitutional protections for blacks in the states of his primary victories? Judge Poole's rationale requires affirmative answers to these questions.

The district court made a "quick comparison with the facts of the racial gerrymandering cases on which *Ban-*

demer was based [to demonstrate] the distance of the Republicans from alleging a claim." *Badham*, slip op. at 21 (App. A at 18a). As might be expected of a "quick comparison," it was both incomplete and inappropriate and stems from the district court's erroneous belief that to state a claim, a political group must be "shut out" entirely of political processes at all levels of government, or "treated as political pariahs." *Badham*, slip op. at 21 (App. A at 19a.). Rather, this Court's precedents recognize that the dilution, minimization or cancelling out of voting strength is actionable. *Whitcomb* v. *Chavis*, 403 U.S. 124, 143 (1970); *Fortson* v. *Dorsey*, 379 U.S. 433 (1965); *Burns* v. *Richardson*, 384 U.S. 73 (1966). *See also*, *White* v. *Regester*, 412 U.S. 755, 765-66 (1973); *Rogers* v. *Lodge*, 458 U.S. 613, 617 (1982).

Contrary to the lower court's "quick comparison" only to extreme racial discrimination cases, in many recent racial vote dilution cases the minority was not totally excluded or shut out from the political process. In *Thornburg* v. *Gingles*, 478 U.S. 30 (1986), for example, this Court did not reject out of hand the vote dilution claims of the black plaintiffs simply because blacks had, in some districts, achieved electoral success.[7] Nonetheless, that is the clear conclusion the district court incorrectly reached from its reading of that case. *Badham*, slip op. at 21, App. A at 19a.

C. Fair and Effective Representation in Congress Is Protected by the Equal Protection Clause and Is Vitally Important to California Republicans.

Judge Poole maintained that appellants' complaint fails in part because of its "[p]articularly conspicuous" absence

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[7] Even though this Court concluded that a district court may "appropriately take account of the circumstances surrounding recent black electoral successes in deciding its significance" to a claim under the Voting Rights Act, this Court specifically held that the district court did not err "in refusing to treat the fact that some black candidates have succeeded as dispositive" of a vote dilution claim. *Thornburg* v. *Gingles*, 106 S. Ct. 2752, 2779-80 (1986).

of "any allegation that plaintiffs' interests are being 'entirely ignore[d]' by their congressional representatives," *Badham* slip op. at 14 (App. A at 13a). The court below rejected the fact that significant policy differences exist between political parties and their candidates, so the political views of Republican voters in individual gerrymandered districts or statewide will not be adequately reflected by the particular congressmen elected under A.B. 2X. Appellants' complaint contains numerous allegations on this point. (*See, e.g.* Complaint sections 20, 26 & 28; App. C at 41a, 47a-50a.) A.B. 2X promotes—and appellants' complaint alleges—just the sort of "lack of responsiveness by those elected to the concerns of the relevant groups" noted by Justice White in *Bandemer*, 106 S. Ct. at 2810 (citing *Rogers* v. *Lodge*, 458 U.S. 613, 625-27 (1982); *White* v. *Regester*, 412 U.S. 755, at 766-67 (1973)).[8]

The House of Representatives is the institution of our national government which was designed to be most responsive to the changing will of the electorate. Insulation of the California delegation from the will of the electorate violates fundamental notions of our democracy:

> As it is essential to liberty that the government in general should have a common interest with the people, so it is particularly essential that the branch of it under consideration [the House of Representatives] should have an immediate dependence on, and an intimate sympathy with, the people.

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[8] Appellants also find support in Justice Powell's statement in *Bandemer* that:

> it defies political reality to suppose that members of a losing party have as much political influence over [its elected officials] as do members of the victorious party. Even the most conscientious [legislators] do not disregard opportunities to reward persons or groups who were active supporters in their election campaigns. Similarly, no one doubts that partisan considerations play a major role in the passage of legislation and the appointment of state officers.

Bandemer, 106 S. Ct. at 2830 (Powell, J., concurring in part, dissenting in part).

The Federalist No. 51, at 329 (J. Madison or A. Hamilton) (Henry Cabot Lodge ed. 1892).

As Justice O'Connor noted in her concurrence in *Bandemer*, "The preservation and health of our political institutions, state and federal, depends to no small extent on the continued vitality of our two-party system, which permits both stability and *measured change*." *Bandemer*, 106 S. Ct. at 2817 (O'Connor, J., concurring) (emphasis added). There is no measured change under A.B. 2X. The composition of the California congressional delegation—comprising more than one-tenth of the entire membership of the Congress of the United States—has been substantially isolated from partisan change through a crude but clever gerrymander.

In recent years, the outcome of enormously significant policy votes could have been affected by a slight alteration in the political composition of the California congressional delegation. Were it not for the A.B. 2X gerrymander, appellants would have been able to elect additional congressmen, whose votes might have altered the outcome of important congressional and national policy issues.[9] Appellants were willing to produce and are capable of producing evidence that the clear political and philosophical differences between the major political parties and their candidates do indeed matter to voters in congressional elections.

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[9] The difference in voting patterns between the Democratic and Republican members of California's congressional delegation is quite stark. In a recent rating of California's congressional members on the basis of key votes, the Americans for Democratic Action (ADA) gave California Democrats an average rating of 82 and California Republicans an average rating of four. The range of ADA ratings for individual Democrats was from 70 to 100, while the range for Republicans was from zero to 25. In contrast, the American Conservative Union (ACU) gave the same Democratic delegation an average rating of six and California Republicans an average rating of 88. The range of ACU ratings of the Democrats was from zero to 23, while the range for Republicans was from 64 to 95. Barone & Ujifusa, *The Almanac of American Politics 1988* at 67-181 (1987).

II. IF THE EGREGIOUS DISCRIMINATORY EFFECTS OF CALIFORNIA'S CONGRESSIONAL REDISTRICTING STATUTE ARE NOT THE BASIS FOR A PRIMA FACIE CLAIM, NO SET OF ALLEGATIONS OR FACTS CAN BE, AND THE RIGHTS ADUMBRATED IN *BANDEMER* ARE EVANESCENT.

The record in *Bandemer* appears positively ectomorphic when contrasted with the serious discriminatory effects of A.B. 2X. The *Bandemer* plurality rejected the notion that "*any* interference with an opportunity to elect a representative of one's choice would be sufficient to allege or make out an equal protection violation . . ." *Bandemer*, 106 S. Ct. at 2811 (emphasis in original), and declined an invitation to become involved in "attack[s] on minor departures from some supposed norm." *Id.* That appears to have been the case in *Bandemer*, where the challenged districting's "only concrete effect on the Democrats in Indiana" was the "possibly transitory results" of one election, *Id.* at 2814.

The *Bandemer* plurality required that plaintiffs in a gerrymandering challenge must allege and prove more than a *de minimis* discriminatory effect to make a prima facie case of illegal discrimination. *Id.* However, this "heightened effect" requirement is "the only real difference between this type of equal protection claim and others." *Id.* at 2815 n.19. The district court below perverted *Bandemer*'s "more than a *de minimis* effect" requirement in such a way as to render meaningless *Bandemer*'s holding that partisan gerrymandering claims are justiciable. While the district court in *Bandemer* may have accepted too little evidence of discriminatory effect, the court below demands far too much.

Judge Poole contends erroneously that appellants could *never* allege sufficient discriminatory effect because, among other things, a California Republican is President of the United States and California has a Republican Governor and United States Senator. *Badham*, slip op. at 18 (App.

A at 17a). *Bandemer* imposes no such requirement; it is purely the handiwork of the district court. Under *Bandemer*, evidence of persistently degraded political influence in the form of repeatedly disproportionate election results, predictable future election results causally connected with district boundary manipulation and a lack of electoral competition is sufficient proof of discriminatory effect. Appellants expressly pleaded the existence of these as well as many other discriminatory effects of A.B. 2X.

The complaint below alleges discriminatory effects far more serious than those in *Bandemer* and is certainly sufficient to meet the plurality's criteria of continuing discriminatory effect.

> [A]n equal protection violation may be found only where the electoral system substantially disadvantages certain voters in their opportunity to influence the political process effectively. In this context, such a finding of unconstitutionality must be supported by evidence of *continued frustration* of the will of a majority of the voters or effective denial to a minority of voters of a fair chance to influence the political process.

Bandemer, 106 S. Ct. at 2811 (emphasis added). Thus the plurality recognized that unconstitutional discrimination occurs when the electoral system is arranged so as to "*consistently degrade*" the influence of a voter or a group of voters. *Id.* The allegations of the complaint herein clearly meet these criteria. (*See*, Complaint sections 3, 21 & 26-29; App. C at 33a, 41a, 47-51a.)

The crucial element of proof of discriminatory effect is that a redistricting plan "locks in" unfair election results. *Bandemer*, 106 S. Ct. at 2812.

Under *Bandemer*, disproportionate results in a single election do not, without more, prove discriminatory effect. It is another thing altogether, however, where a redistricting plan (such as A.B. 2X) virtually dictates electoral outcomes and representation for an entire decade, locking

an unfair system of representation into place with non-competitive districts. This distinction was recognized by Justice Brennan's majority opinion in *Thornburg* v. *Gingles*, which was decided on the same day as *Bandemer*:

> [t]he *usual predictability* of the majority's success distinguishes *structural* dilution from the mere loss of an occasional election. *Cf. Davis* v. *Bandemer*, ___U.S. ___, ___, 106 S.Ct. 2797, ___, 89 L.Ed.2d ___(1986) (opinion of White, J.).

Thornburg, 106 S. Ct. at 2767 (emphasis added) (citations omitted).

Appellants' complaint below alleged not one, but three sets of elections, involving 135 congressional races in which *only one seat* changed hands. Additionally the complaint alleged that the ratio of Democratic seats to Republican seats is a "predictable consequence" of A.B. 2X, and a "reliable prediction" of election results throughout the rest of the decade. (Complaint section 27; App. C at 49a). This was not mere speculation. Appellants' complaint was filed five weeks before the November 1986 elections and alleged that the partisan composition of the state's congressional delegation "will remain virtually immutable in 1986." (Complaint section 27; App. C at 49a.) That prediction was accurate: 27 Democrats and 18 Republicans were elected, the same as in the 1984 elections. Not a single seat changed parties. Appellants alleged numerous indicia relevant to discriminatory effect, many of which were above and beyond those mentioned in—or specifically required by—*Bandemer*. *See* Statement of the Case, *supra*.

The effects of A.B. 2X are sufficiently serious to require intervention by this Court to protect the rights of appellants to have an effective voice in California's congressional election process. Justice White expressed confidence "in the lower courts' abilities to distinguish between disproportionality *per se* and *the lack of fair representation that continued disproportionality in conjunction with other indicia* may demonstrate." *Id.* at 2816 n.21 (emphasis added). The court below failed to make such a

distinction. For over five years, the district court below has allowed the archetypal gerrymander of the 1980s to go unchecked, uncondemned, and uncorrected. If appellants' allegations against the California gerrymander do not meet *Bandemer*'s requirement of heightened effects, *no set of allegations or facts by Democrats or Republicans will ever do so.*[10]

III. THE DISTRICT COURT HAS, IN EFFECT, RENDERED THIS COURT'S DECISION IN *DAVIS* V. *BANDEMER* A NULLITY.

The impact of Judge Poole's opinion is to reject this Court's decision in *Bandemer*. The court below concluded that since California Republican voters have successfully elected Republican candidates in some statewide elections, they have no right to challenge the unconstitutional political gerrymandering of the state's 45 congressional districts. Were such a case to be brought anywhere in the nation by Democrats, under the district court's reasoning, the numerous electoral successes of candidates of that party in other jurisdictions would mean that Democrats could be afforded no protection against a Republican gerrymander, no matter how gross or distorting of voter will. Thus, Judge Poole's opinion is based on the untenable conclusion that, even though *Bandemer* held that claims of partisan gerrymandering are justiciable, it set an unattainable evidentiary standard that no member of either of the two major political parties could ever satisfy.

This Court is well aware that, in just two years, the 1990 decennial census will result in the reapportionment and redistricting (for the 1992 elections) of the United States House of Representatives, state legislatures, and

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[10] Judge Poole's opinion places significant emphasis on his invitation to appellants' counsel to allege additional effects, but it was a meaningless proposal. At oral argument it was clear to appellants that the district court viewed Republican electoral success nationally and in statewide elections, as an absolute bar to appellants' claim. Judge Poole's opinion bears this out. Appellants could not allege that Republican candidates never win statewide elections in California.

political subdivisions of every state. The law of redistricting is being outpaced by the technology of redistricting. Computer technology has dramatically changed the nature of the process. As Justice Stevens has recognized:

> Computers now make it possible to generate a large number of alternative plans, consistent with equal population guidelines and various other criteria, in a relatively short period of time, and to analyze the political characteristics of each one in considerable detail.

Karcher v. *Daggett*, 462 U.S. 725, 752 (1983) (Stevens, J., concurring). *See also id.* at 776 (White, J., dissenting).[11]

A refusal by this Court to offer relief from the most egregious partisan gerrymander in America will be an irresistible invitation to those parties in power throughout our nation to satisfy their last paroxysm of partisan lust and use computer-generated cartography to maximize their political advantage.[12] As it did in *Baker* v. *Carr*, 369 U.S. 186

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[11] There is considerable agreement within the political science and statistical communities that modern computer techniques can be used, not only to assist in producing redistricting plans, but also to measure effectively the base voting strength of any political party, especially mainstream parties, even in the absence of voter registration information. *See, e.g.*, Backstrom, Robins & Eller, *Establishing a Statewide Electoral Effects Baseline*; Niemi, *The Swing Ratio as a Measure of Partisan Gerrymandering*; Kernell & Grofman, *Determining the Predictability of Partisan Voting Patterns in California Congressional Elections, 1978-1984*; *et al.* in Toward Fair and Effective Representation: Political Gerrymandering and the Courts (B. Grofman, ed., 1988 forthcoming). Such use was alleged here.

[12] "One might add that the California congressional stakes are quite real in national terms. With 45 districts (and more likely after 1990), the state accounts for more than one-tenth of the 435 seats of the House of Representatives. In some future time, as California goes, so also may go the House of Representatives. And, in the more immediate context of judicial policy-making, as the court goes in the forthcoming California case, so may go the nation as far as the permissible limits of partisan gerrymandering." Longley, *Partisan Gerrymandering*, 10 A.P.S.A. Newsletter 1, 67 (1986).

(1962), this Court in *Bandemer* expressed great confidence in the ability of the federal district courts to apply equitable principles in an expanding area of jurisprudence. 106 S. Ct. at 2805. The district court below has failed to act in the equitable manner envisioned by this Court and has, instead, badly confused and damaged the state of the law of political vote dilution.

Unless this Court corrects the lower court's misguided interpretation of its decision in *Bandemer*, its holding in *Bandemer* that claims of egregious political gerrymandering are justiciable

> is only a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will. *Edwards* v. *California*, 314 U.S. 160, 186 (1941) (Jackson, J., concurring).

IV. APPELLANTS DEMAND PROTECTION OF THEIR CONSTITUTIONAL RIGHTS OF "FAIR AND EFFECTIVE" REPRESENTATION, NOT PROPORTIONAL REPRESENTATION.

This Court has repeatedly made clear that no group—political or otherwise—is entitled to representation in proportion to its strength in the population. *Bandemer*, 106 S. Ct. at 2814; *City of Mobile* v. *Bolden*, 446 U.S. 55 (1980). In the tortuous and almost incomprehensible five-year ordeal of this litigation, appellants have *never* argued that lack of proportional representation states a claim sufficient under any constitutional provision. Proportional representation is not a *goal* of redistricting or of this case. Rather, the lack of any rational relationship between votes cast and seats won is one of many *indicia* of the scope of this gerrymander.

Of course, even though proportionality is merely a measure of a gerrymander, not a constitutional mandate, it is not altogether reasonable in a majoritarian, federal system that the party that wins more votes should be arbitrarily prohibited from winning more than 50% of the seats in question. Yet, the effect of A.B. 2X is just that. In the

1984 congressional elections in California, Democrats were elected to 27 of California's 45 seats—60 % of the seats—even though Republican congressional candidates actually received more of the two-party vote than Democratic candidates (49.4% Republican to 48.3% Democratic). These results stand in contrast to this Court's observation in *Reynolds* v. *Sims*:

> Logically, in a society ostensibly grounded on representative government, it would seem reasonable that a majority of the people of a State could elect a majority of that State's legislators.

377 U.S. 533, 565 (1964).

V. THE DISTRICT COURT ERRED IN HOLDING THAT ARTICLE I, SECTION 2 OF THE CONSTITUTION IS INAPPLICABLE TO THE PARTISAN GERRYMANDERING OF CONGRESSIONAL DISTRICTS.

A. Article I, Section 2 Has Been Historically Invoked In Both Qualitative and Quantitative Vote Dilution Cases.

In dismissing appellants' second cause of action, the court below erroneously concluded that article I, section 2 of the Constitution may be invoked only if a congressional redistricting plan is challenged on the basis of population disparities between districts. *Badham*, slip op. at 23 (App. A at 21a).

Article I, section 2 applies to both numerical *and* political gerrymanders. Nothing in the language of *Wesberry* v. *Sanders*, 376 U.S. 1 (1964), upon which Judge Poole relies, supports the narrow view that population is the sole diluting factor. In fact, the *Wesberry* Court explicitly outlined examples of how article I had historically been applied to protect the right to vote:

> It is not surprising that our Court has held that this Article gives persons qualified to vote a constitutional right to vote and to have their votes counted. *United States* v. *Mosley*, 238 U.S. 383; *Ex Parte Yarbrough*,

> 110 U.S. 651. Not only can this right to vote not be denied outright, it cannot, consistently with Article I, be destroyed by alteration of ballots, see *United States* v. *Classic*, 313 U.S. 299, or diluted by stuffing of the ballot box, see *United States* v. *Saylor*, 322 U.S. 385.

Wesberry, 376 U.S. at 17.

It follows that "the command of Art. I, Sec. 2, that Representatives be chosen 'by the People of the several States' means that as nearly as is practical one man's vote in a congressional election is to be *worth* as much as another's." *Wesberry*, 376 U.S. at 7-8 (emphasis added). *Wesberry*'s reliance on and analysis of article I, section 2, demonstrates that partisan gerrymandering cannot be used to defeat the constitutional right of each voter to an equal voice in electing representatives to Congress.

Partisan gerrymandering of equipopulous districts is another form of vote dilution cognizable under article I, section 2, which requires that citizens not have their vote "diluted." *Id.* at 17. "One principle was uppermost in the minds of many delegates [to the Constitutional Convention]: that, no matter where he lived, each voter should have a voice equal to that of every other in electing members of Congress." *Id.* at 10.

Moreover, courts have already recognized, or at a minimum implied, that article I, section 2 provides protection against political gerrymandering. *Daggett* v. *Kimmelman*, 580 F. Supp. 1259 (1984), *aff'd sub nom.*, *Karcher* v. *Daggett*, 467 U.S. 1222 (1984), involved the selection of a congressional redistricting plan to replace the plan struck down in *Karcher* v. *Daggett*, 462 U.S. 725 (1983). The three-judge district court in New Jersey evaluated several proposed plans that were almost identical in terms of population deviations and chose the plan that did not involve "an intentional gerrymander in favor of certain Democratic representatives." The opinion in *Daggett* v. *Kimmelman* clearly was grounded in article I, section 2. It was summarily affirmed by this Court. *Karcher* v. *Daggett*, 467 U.S. 1222 (1984).

The mandate of *Wesberry* v. *Sanders* is fair representation, equal voices, and undiluted votes. It applies whether these rights are undermined by population deviations or partisan discrimination. *Wesberry*, 376 U.S. at 17-18.

B. Article I, Section 2 Places Greater Limitations on Congressional Gerrymandering Than Does the Equal Protection Clause on Legislative Gerrymandering.

The district court erroneously concludes that *Mahan* v. *Howell*, 410 U.S. 315, 322 (1973), *Kirkpatrick* v. *Preisler*, 394 U.S. 526, 534 (1969), and *Karcher* v. *Daggett*, 462 U.S. at 734 n.6, make population equality the only consideration in districting challenges under article I, section 2. On the contrary, those cases simply point out the differences in the approach to population variations in congressional and legislative cases. Thus, states attempting to justify population deviations in congressional districting face a far more stringent burden than in legislative districting cases. Judge Poole suggests below that, because "*Kirkpatrick* does little to prevent what is known as gerrymandering," *Karcher* at 734 n.6, *cited in Badham*, slip op. at 24 (App. A at 21a), such claims are not cognizable under article I, section 2. The Supreme Court, however, cannot be said to have resolved issues in *Kirkpatrick* and *Karcher* that were not before it.

The issue is now before this Court. There should be, as in population-based cases, a far more exacting scrutiny of congressional gerrymanders under article I, section 2 than of legislative gerrymanders under the equal protection clause.

VI. THE DISTRICT COURT ERRONEOUSLY IGNORED THE FIRST AMENDMENT PROTECTIONS GUARANTEED TO POLITICAL PARTIES.

A. The First Amendment Protects Political Parties from Egregious Political Gerrymandering.

A.B. 2X clearly penalizes the right of political association. Although the district court agreed that "it is well-settled that the 'First Amendment protects political as-

sociation as well as political expression' *Buckley* v. *Valeo*, 424 U.S. 1, 15(1976)," *Badham*, slip op. at 25 (App. A at 22a), the court dismissed appellants' claim that egregious gerrymandering violates the associational rights of the members of a targeted political party. Contrary to Judge Poole's assertion that appellants "failed to explain *how* A.B. 2X penalizes" the exercise of their First Amendment rights," *Id.* at 25, the complaint below is replete with allegations that Republican voters are denied their full voice in California's congressional electoral system.

Judge Poole erroneously held that merely because Republicans achieve some electoral success, they can claim no infringement of associational rights. *Id.* at 19 (App. A at 17a). When voters are identified on the basis of their party affiliations or consistent preference for candidates of one party and for that reason are relegated to a district designed to eliminate their ability to affect the outcome of an election, their right to freedom of association has been improperly denied and penalized. This Court's first amendment jurisprudence does not require that Republicans be completely barred from voting or running for office in order to state a claim. Rather, when an election statute threatens "to reduce diversity and competition in the marketplace of ideas," that statute must fall. *Anderson* v. *Celebrezze*, 460 U.S. 780 (1983). As this Court noted in *Anderson*, "it is especially difficult for the state to justify a restriction that limits political participation by an identifiable group whose members share a particular viewpoint [or] associational preference . . . ." *Id.* at 793. It is precisely for the purpose of imposing such restrictions and limitations on Republican voters, however, that the gerrymandered districts in A.B. 2X were drawn.

The "First Amendment freedom to gather in association for the purpose of advancing shared beliefs is protected by the Fourteenth Amendment from infringement by any State." *Democratic Party of the United States* v. *Wisconsin ex rel. La Follette*, 450 U.S. 107, 121 (1981) (citations omitted). Just as "[a]ny interference with the freedom of a party is simultaneously an interference with the freedom

of its adherents" *Sweezy* v. *New Hampshire*, 354 U.S. 234, 250 (1957), any interference with the freedom of party adherents on the basis of their party affiliation or electoral tendencies abridges the freedom of the party's right to associate.

Williams v. *Rhodes*, 393 U.S. 23, 32 (1968) held that Ohio's ballot access laws were repugnant to the first amendment because the electoral process gave a decided advantage to some political parties over others. The state laws burdened "two different, although overlapping, kinds of rights—the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively," thereby offending the first amendment by placing unequal burdens on both the right to vote and the right to associate. *Williams*, 393 U.S. at 30.

B. Partisan Gerrymandering Limits Competition And Responsiveness In The Political Process.

Egregious gerrymandering infringes on appellants' first amendment associational rights because its dilutes their impact as voters who share particular views on public policy. It is "a fundamental tenet of American democracy that a representative government be responsive to the changing will of the electorate." Grofman, *Criteria for Districting: A Social Science Perspective*, 33 U.C.L.A. L. Rev. 77, 112 n.63 (1985). Appellants have alleged—and California's election results since 1982 have proved—that California's congressional districts are largely insensitive to electoral changes, because they lock in "a particular partisan imbalance . . . through the use of dispersal and concentration techniques of gerrymandering," *Id. See also* Weinstein, *Partisan Gerrymandering: The Next Hurdle in the Political Thicket*, 1 J.L. & Pol. 357, 373 (1984).

VII. THE DISTRICT COURT ERRONEOUSLY DISMISSED APPELLANTS' CLAIMS UNDER THE GUARANTEE CLAUSE.

Article IV, section 4 of the Constitution provides that the United States shall guarantee to every state in the

union a republican form of government. A.B. 2X violates the guarantee clause by making a truly republican form of government impossible to achieve. As this Court's one-person, one-vote jurisprudence has developed from *Baker* v. *Carr*, 369 U.S. 186 (1962) through *Karcher* v. *Daggett*, 462 U.S. 725 (1983), its emphasis has been on the weight of each individual's vote. Exclusive judicial focus on a districting plan's population equality can aggravate "the threat of pure majoritarian dominance of legislative bodies." Fein, *Constitutional Restraints on Political Gerrymandering: A Partial Corrective of One Person, One Vote*, 7 Commonsense 3, 4 (1987).

Mechanical emphasis on the *quantitative* nature of redistricting has obscured *qualitative* aspects of democratic representation that provide a balance between the simple aggregation of votes to achieve a majority and the development of the many coalitions necessary for effective representation. Communities of interest should continue to be a viable representation basis to be considered along with population equality. "The guarantee clause, along with the provisions and structure of the Constitution and our political history, at least provides some guidance for" the Court in striking this balance. Bork, *Neutral Principles and Some First Amendment Problems*, 47 Indiana L.J. 1, 19 (1971). "The concept of the primary right of the individual in this area provides none." *Id.* Appellants' guarantee clause claim, taken together with their claims under the first and fourteenth amendments, provides a framework for balancing the fundamental rights of the individual voter with the need for vibrant political discourse between political groups.

The district court below dismissed appellants' guarantee clause claim as nonjusticiable under its reading of *Baker* v. *Carr*, 369 U.S. 186 (1962). This Court, however, appears to have qualified the justiciability issue in both *Baker* and *Reynolds* v. *Sims*, 377 U.S. 533 (1964), noting that *Baker* held only that "*some* questions raised under the guarantee clause are nonjusticiable, where 'political' in nature and where there is a clear absence of judicially manageable standards." *Id.* at 582 (emphasis added). The guarantee clause does have continued vitality because manageable

standards." *Id.* at 582 (emphasis added). The guarantee clause does have continued vitality because manageable standards for assessing partisan gerrymanders exist, as this Court recognized in *Bandemer*.

If a state statute made legislative or congressional membership hereditary or granted life tenure to legislators or congressmen, the foundations of republican government would be threatened. Likewise a statute which contains specific language allocating 27 of California's congressional seats to Democrats and 18 to Republicans would violate the right to a republican form of government. Although less dramatic in its language, A.B. 2X results in an equally offensive effect—the entrenchment of a political party in Congress. It was threats such as these that the authors of the Constitution sought to disarm in the adoption of the guarantee clause.

CONCLUSION

This appeal presents a unique opportunity, as well as the compelling necessity, for the Court to provide much needed guidance to courts and legislatures nationwide on the meaning of its *Bandemer* decision. If the district court's ill-conceived interpretation of *Bandemer* is allowed to stand, the paradigmatic egregious gerrymander of the 1980s—California's computer-assisted congressional districting—rather than remaining an invidious exception, will become the model and the rule for redistricting in every jurisdiction in the nation in the 1990s. This Court is faced with clear, stark alternatives in this appeal. Will the voters of America determine the membership of the House of Representatives, as was envisioned by the Framers of our Constitution, or will the membership of Congress be principally dictated by the partisan passions of the individuals who have the power to draw the lines? The Court should note probable jurisdiction and the decision below should be reversed.

Respectfully submitted,

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May 4, 1988

APPENDIX

APPENDIX A

FOR PUBLICATION
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT E. BADHAM, ROBERT NAYLOR, ERIC SEASTRAND, ALDO SILVESTRI, MICHAEL W. COBB, FRANK O. VERLOT, DONNA S. RICHARDSON, PETER SCHRAGER, JANE BAKER, CHARLES A. MEYER, KIRK LINDSEY, DONALD DRISCOLL, ROGER T. ERICKSON, D.D.S., CYNTHIA TROBITZ-THOMAS, WALLY HERGER, LOWELL LANDOWSKI, JACK HITE, MIKE GARZA, DENNIS McQUAID, ROSEMARY THAKAR, STEVE EIGENBERG, DAVID WILLIAMS, MICHAEL LaCRONE, BOB NASH, NORMAN SHUMWAY, CHIP PASHAYAN, DAVID CREVELT, ROBERT LAGOMARSINO, BILL THOMAS, ELTON GALLEGLY, CARLOS MOORHEAD, GEORGE WOOLVERTON, JERRY ZERG, DAVID BAIRD, ROBERT KERNS, ROBERT SCRIBNER, GEORGE ADAMS, CARL JOHNSON, JOHN W. ALMQUIST, JACKSON M. McMURRAY, JOYCE ROBERTSON, DAVID DREIER, CHARLES HOUSE, JERRY LEWIS, BOB HENLEY, AL McCANDLESS, ROBERT DORNAN, WILLIAM DANNEMEYER, BOB BADHAM, BILL LOWERY, DAN LUNGREN, RON PACKARD, BILL MITCHELL, and DUNCAN HUNTER,	) No. C-83-1126-RHS)) Three-Judge Court))) MEMORANDUM) OPINION) AND ORDER)

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Plaintiffs,

v.

MARCH FONG EU, Secretary of State of the State of California,

Defendant,

ASSEMBLY OF THE STATE OF CALIFORNIA; THE MEMBERS OF THE CALIFORNIA DEMOCRATIC CONGRESSIONAL DELEGATION,

Defendants-Intervenors.

Before: POOLE, Circuit Judge; ZIRPOLI and SCHNACKE, District Judges.

POOLE, Circuit Judge, with whom ZIRPOLI, District Judge, concurs:

This case involves a constitutional challenge by plaintiffs, Republican congressional representatives and certain registered Republican voters of California, to Assembly Bill 2X, Chapter 6, 1st Extraordinary Session of the 1983-84 California Legislature ("A.B. 2X"), which effected the redistricting of congressional districts in California following the 1980 Census. Pending before us is the defendants-intervenors' motion to dismiss plaintiffs' third amended complaint[1] for failure to state a claim, pursuant to Fed. R. Civ. P. 12(b)(6). We hold that plaintiffs have not alleged,

[1] At oral argument, we granted plaintiffs' motion to amend their third amended complaint to add additional plaintiffs. The substance of the complaint was not changed, however, and we shall continue to refer to the complaint at issue as plaintiffs' third amended complaint.

and on this record cannot allege, facts sufficient to state a claim under the Supreme Court's holding in *Davis v. Bandemer*, ___U.S. ___, 106 S.Ct. 2797 (1986). Accordingly, the motion to dismiss is granted with prejudice.

BACKGROUND

Under the 1970 Federal Decennial Census, California was entitled to 43 congressional seats in the United States House of Representatives.[2] Following the 1980 Census, California became entitled to 45 representatives. In order to effect the necessary redistricting, the California Legislature passed Assembly Bill 301 ("A.B. 301") in September, 1981. At that time, Democratic majorities controlled both houses of the California Legislature, and voting on A.B. 301 followed party lines. Governor Edmund G. Brown, Jr., a Democrat, signed A.B. 301 into law on September 16, 1981.

The same day, the chairman of the California Republican Party and the Republican National Committee began a petition drive aimed at qualifying a referendum on A.B. 301 for the June 1982 ballot.[3] *See Assembly v. Deukmejian*, 30 Cal.3d 638, 644 (1982), *appeal dismissed and cert. denied, Republican Nat'l Comm. v. Burton*, 456 U.S. 941 (1982). The referendum was successful and resulted in preventing A.B. 301 from taking effect of its own force; nevertheless, the California Supreme Court ordered that the challenged districts be used for the June 1982 and

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[2] The redistricting plan following the 1970 Census was prepared by Special Masters appointed by the California Supreme Court after the Legislature and then-Governor Ronald Reagan failed to reach agreement. See *Legislature v. Reinecke*, 10 Cal.3d 396 (1973). In the November 1980 election, 22 of the 43 seats were won by Democrats; 21 by Republicans.

[3] Under California law, a referendum to approve or reject a statute must be held if a sufficient number of voters sign a petition within 90 days of the statute's enactment. Cal. Const., art. II, §§ 9, 10.

November 1982 elections because they were the only practical alternative. *Assembly v. Deukmejian,* 30 Cal.3d at 678.

In the November 1982 general election for representatives in Congress, 28 Democrats and 17 Republicans were elected under the A.B. 301 districts. In the same election, George Deukmejian, a Republican, was elected to succeed Brown as Governor, defeating Los Angeles Mayor Thomas Bradley, a Democrat. Brown, whose term was due to expire on January 2, 1983, called an extraordinary session of the Legislature, which convened on December 6, 1982. On December 29, A.B. 2X, a previously-passed Board of Equalization reapportionment bill, was withdrawn from Governor Brown's desk and amended to include new congressional districts, allegedly based on the rejected A.B. 301 districts. As amended, A.B. 2X was passed by both houses on a party-line vote. Governor Brown signed A.B. 2X into law shortly before leaving office on January 2, 1983.

PRIOR PROCEEDINGS

On March 4, 1983, plaintiffs filed the original of this action, alleging that A.B. 2X violated several state laws, as well as federal constitutional provisions. Pursuant to 28 U.S.C. § 2284, this three-judge district court was convened to hear the challenge to the constitutionality of the apportionment of the congressional districts at issue.

Perceiving that a resolution favorable to the plaintiffs on any of their state claims might partially or completely avoid the need to address the federal constitutional issues, we ordered abstention so that plaintiffs' state-law claims could be considered by the California courts. *Badham v. March Fong Eu,* 568 F.Supp. 156 (N.D. Cal.), *aff'd sub nom. Badham v. United States Dist. Court,* 721 F.2d 1170 (9th Cir. 1983). After the circuit court decision of affirmance was filed, but before expiration of the time within which to petition for rehearing pursuant to Fed. R. App.

P. 40(a), plaintiffs filed a petition for writ of mandate in the California Supreme Court tendering the state-law issues and asking for a decision within 30 days. That court denied the petition on the grounds that the circuit court opinion had not become final, that plaintiffs' delay had prevented resolution of the factual dispute by the date they claimed to be essential, and that the relief requested was inappropriate. *Badham v. March Fong Eu,* No. S.F. 24638 (Cal. Sup. Ct. Oct. 27, 1983).

On December 12, 1983, plaintiffs requested this court to reassert jurisdiction and to grant leave to file a second amended complaint, purportedly abandoning the state-law claims. The amended complaint was tentatively permitted to be filed, and we scheduled oral argument to determine whether to terminate abstention. After hearing argument and reviewing the parties' submissions, we concluded that the state-law issues were still implicit in the case and that the basis for abstention as previously set forth was still valid, and we again ordered the parties to seek resolution of the issues in state court. *Badham v. March Fong Eu,* No. C-83-1126 (N.D. Cal. June 19, 1984) (Schnacke, District Judge, dissenting), *aff'd mem. sub nom. Badham v. United States Dist. Court,* 749 F.2d 36 (9th Cir. 1984), *cert. denied sub nom. Badham v. Secretary of State,* 470 U.S. 1084 (1985).

In the meantime, following our second order of abstention, the parties had become actively involved in a suit in the Superior Court of California in Los Angeles, which had been filed by the defendants seeking a declaration of the validity of A.B. 2X. As our previous orders had noted, we viewed that pending litigation as a possible, though not exclusive, vehicle for resolving the state claims. Some efforts were made to reach stipulations which might enable those issues to be tried by the state court, but the parties could not reach agreement. After the Supreme Court denied certiorari, the parties again returned to this court and jointly requested that we vacate abstention and allow

them to proceed to trial on plaintiffs' second amended complaint. With some concern about whether the state law issues had really been removed, we agreed to vacate abstention and reassert jurisdiction.

Following argument on defendants' motion to dismiss plaintiffs' second amended complaint, we concluded that our wisest course was to await the final outcome of *Bandemer v. Davis*, 603 F.Supp. 1479 (S.D. Ind. 1984), *rev'd, Davis v. Bandemer*, ___U.S. ___, 106 S.Ct. 2797 (1986), which was then pending before the United States Supreme Court. In *Bandemer*, a three-judge district court had held the redistricting of the Indiana legislative districts to be unconstitutional, on the theory that a partisan political gerrymander violated the Equal Protection Clause of the Fourteenth Amendment. As the plaintiffs' second amended complaint raised issues virtually identical to those before the Supreme Court in *Bandemer*, we ordered all proceedings stayed pending the Supreme Court's decision. *Badham v. March Fong Eu*, No. C-83-1126 (N.D. Cal. Sept. 19, 1985), *aff'd mem. sub nom. Badham v. United States Dist. Court*, 785 F.2d 314 (9th Cir. 1986).

After the Supreme Court rendered its decision in *Davis v. Bandemer*, plaintiffs were granted leave to file a third amended complaint. Defendants again moved to dismiss, and we heard argument on the motion on December 5, 1986.

DISCUSSION

I. FIRST CAUSE OF ACTION

Plaintiffs' major contention is that A.B. 2X is "an intentional, invidious and effective gerrymander" that violates the Equal Protection Clause of the Fourteenth Amendment by diluting the strength of Republican voters in California. Before considering the merits of this claim, however, we must briefly address the defendants' contention that this question is nonjusticiable.

A. Justiciability

In *Davis v. Bandemer*, the Court held that a partisan gerrymandering claim was justiciable under the equal protection clause. 106 S.Ct. at 2803-07. Defendants argue that we should distinguish this case because *Bandemer* involved a challenge to *state* legislative redistricting, whereas this case involves a challenge to *congressional* redistricting.

We find this argument unpersuasive. Defendants' first contention, that Article I, Section 4 of the Constitution[4] represents a "textually demonstrable constitutional commitment of the issue to a coordinate political department," *Baker v. Carr*, 369 U.S. 186, 217 (1962), was rejected by the Supreme Court in *Wesberry v. Sanders*, 376 U.S. 1 (1964):

> [W]e made it clear in *Baker* that nothing in the language of [Article I, Section 4] gives support to a construction that would immunize state congressional apportionment laws which debase a citizen's right to vote from the power of courts to protect the constitutional rights of individuals from legislative destruction . . .

376 U.S. at 6.

Defendants attempt to distinguish *Wesberry* on the ground that *Wesberry* involved a numerical rule of law that could be applied without "expressing a lack of the respect due [a] coordinate branch[ ] of Government." *Baker v. Carr*, 369 U.S. at 217. This argument, however, was rejected in *Bademer:*

> The mere fact, however, that we may not now similarly perceive a likely arithmetic presumption in the

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[4] Article I, Section 4 provides: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators."

> instant context does not compel a conclusion that the claims presented here are non-justiciable.

106 S.Ct. at 2805.

We find nothing in *Bandemer's* justiciability analysis that turns on the distinction between congressional redistricting and state legislative redistricting. Accordingly, we will address the Omerits of defendants' motion to dismiss.

B. The Threshold Effects Test

In assessing whether plaintiffs have sufficiently alleged an equal protection claim under *Davis v. Bandemer*, we must first grapple with the fact that no single opinion in *Bandemer* commanded the assent of a majority of the court. Of the six justices who believed that partisan gerrymandering claims were justiciable, a plurality of four held that "a threshold showing of discriminatory vote dilution is required for a prima facie case of an equal protection violation." 106 S.Ct. at 2816 (opinion of White, J., joined by Brennan, Marshall and Blackmun, JJ.). Two justices dissented, expressing the view that "a state legislature violates the Equal Protection Clause by adopting a redistricting plan designed solely to preserve the power of the dominant political party." *Id.* at 2825 (opinion of Powell, J., joined by Stevens, J.). Three justices concurred in the result on the ground that partisan gerrymandering claims were simply non-justiciable. *Id.* at 2816-17 (opinion of O'Connor, J., joined by Burger and Rehnquist, JJ.).

Despite this tripartite division of views, it is clear that we must apply the "threshold" test advocated by the plurality. In *Marks v. United States*, 430 U.S. 188 (1977), the Court was faced with determining the effect of a prior case, *Memoirs v. Massachusetts*, 383 U.S. 413 (1966), in which three separate opinions supported the judgment. The Court said:

> When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent

> of five Justices, "the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds. . . ." *Gregg v. Georgia*, 428 U.S. 153, 169 n.15 (1976) (opinion of Stewart, Powell and Stevens, JJ.).

Marks, 430 U.S. at 193. Thus, by analogy, we may treat the plurality's analysis in *Bandemer* as "constitut[ing] the holding of the Court and provid[ing] the governing standards," to be applied to this case. *Marks, supra* at 194.

The plurality in *Bandemer* began by setting forth the elements of the claim: "in order to succeed . . . plaintiffs were required to prove both intentional discrimination against an identifiable political group and an actual discriminatory effect on that group." 106 S.Ct. at 2808. Although the dissenters agreed with this initial statement, *see id.* at 2825 (opinion of Powell, J.), the plurality disagreed with the dissenters' position that "disproportionate elections results alone are a sufficient effect to support a finding of a constitutional violation." *Id.* at 2815. Rather, the plurality found it "appropriate to require allegations and proof that the challenged legislative plan has had or will have effects that are sufficiently serious to require intervention by the federal courts in state reapportionment decisions." *Id.* at 2811. The rationale for this requirement

> rest[s] on a conviction that the mere fact that a particular apportionment scheme makes it more difficult for a particular group in a particular district to elect the representatives of its choice does not render that scheme constitutionally infirm. This conviction, in turn, stems from a perception that the power to influence the political process is not limited to winning elections. An individual or a group of individuals who votes for a losing candidate is usually deemed to be adequately represented by the winning candidate and to have as much opportunity to influence that can-

> didate as other voters in the district. We cannot presume in such a situation, without actual proof to the contrary, that the candidate elected will entirely ignore the interests of those voters. This is true even in a safe district where the losing group loses election after election. Thus, a group's electoral power is not unconstitutionally diminished by the simple fact of an apportionment scheme that makes winning elections more difficult, and a failure of proportional representation alone does not constitute impermissible discrimination under the equal protection clause.

Id. at 2810. Based on this rationale, the plurality concluded that the effects threshold required a more broad-based inquiry than present or projected election results under the challenged districts. Specifically:

> [U]nconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or group of voters' influence *on the political process as a whole.*

Id. (emphasis added).

Relying on previous successful challenges in racial gerrymandering cases, the plurality elaborated on the nature of the "threshold showing" that was required:

> In the individual multi-member district cases, we have found equal protection violations only where a history of disproportionate results appeared in conjunction with strong indicia of lack of political power and the denial of fair representation. See *supra,* at 2809. In those cases, the racial minorities asserting the successful equal protection claims had essentially been *shut out of the political process.* In the statewide political gerrymandering context, these prior cases lead to the analogous conclusion that equal protection violations may be found only where a history (actual or projected) of disproportionate results appears in con-

> junction with similar indicia. The mere lack of control of the General Assembly after a single election does not rise to the requisite level.

Id. at 2814 (emphasis added).

With these standards in mind, we now examine the specific allegations of the complaint to see if a sufficient "threshold effect" has been alleged.

C. Sufficiency of the Complaint

As an initial matter, it is clear that the complaint sufficiently alleges a discriminatory intent. Indeed, the complaint is replete with specific allegations tending to show a discriminatory intent, such as the pleaders' allegations of the "uncouth, irregular and bizarre configurations" of the districts and of the eleventh-hour legislative maneuvering to get the bill approved before a Democratic governor left office. The *Bandemer* plurality noted that "[a]s long as redistricting is done by a legislature, it should not be very difficult to prove that the likely political consequences of the reapportionment were intended." 106 S.Ct. at 2809. Thus, as in *Bandemer,* we will focus our attention on the sufficiency of the "effects" alleged by the plaintiffs.

The first "effects" inquiry concerns the "history (actual or projected) of disproportionate [election] results." *Id.* at 2814. Here, the allegations of the complaint are numerous. We are told that A.B. 2X "operates to minimize or cancel out [plaintiffs'] votes and voting strength," and that "[p]laintiffs' votes are persistently degraded and diluted both in individual districts . . . and on a statewide basis." More specifically, plaintiffs allege that A.B. 2X "locks in grossly disproportionate election results" throughout the decade by "allocat[ing] a substantial and permanent majority of seats to Democratic party candidates in percentages far superior to the statewide voting strength of Democratic voters."

In the 1984 election, Republicans received 50.1% of the vote statewide, but received only 40% of the congressional seats (18 of 45). This disparity narrowed somewhat in 1986, when Republicans received 46.9% of the vote and retained the same 18 seats. Plaintiffs have alleged that these results are the direct consequence of A.B. 2X and that they are a reliable prediction of future elections.

The parties disagree over whether these allegations are sufficient to satisfy the first prong of *Bandemer*'s "effects" test. Plaintiffs contend that the only deficiency in *Bandemer* was that the plaintiffs there relied solely on the results of a single election, whereas plaintiffs here have alleged that "the 1981 reapportionment would consign the [Republicans] to a minority status throughout the 1980's." *Id.* at 2812. Defendants argue that plaintiffs must show much more serious deficiencies, such as those shown in the racial gerrymandering cases, and in addition must show that "the [Republicans] would have no hope of doing any better in the reapportionment that would occur after the 1990 census." *Id.*

We need not resolve this dispute, however, because in any case it is clear that plaintiffs cannot satisfy the second prong of the "effects" test. In order to satisfy the second prong, plaintiffs must show "strong indicia of lack of political power and the denial of fair representation." 106 S.Ct. at 2814. The *Bandemer* plurality specifically based this requirement on its prior "cases relating to challenges by racial groups to individual multi-member districts," *id.* at 2810 n.13, and noted that "[i]n those case, the racial minorities . . . had essentially been shut out of the political process." *Id.* at 2814.

It is on this second prong of the "effects" threshold that plaintiffs' complaint falters. Specifically, there are no factual allegations regarding California Republicans' role in "the political process as a whole." *Id.* at 2810. There are no allegations that California Republicans have been

"shut out" of the political process, nor are there allegations that anyone has ever interfered with Republican registration, organizing, voting, fund-raising, or campaigning. Republicans remain free to speak out on issues of public concern; plaintiffs do not allege that there are, or have ever been, any impediments to their full participation in the "uninhibited, robust, and wide-open" public debate on which our political system relies. *New York Times Co. v. Sullivan,* 376 U.S. 254, 270 (1964).

Particularly conspicuous by its absence is any allegation that plaintiffs' interests are being "entirely ignore[d]" by their congressional representatives. *Bandemer,* 106 S.Ct. at 2810. Instead, plaintiffs claim that Democratic incumbents will be re-elected "without need to attend to the views of fragmented and submerged Republican minorities in their districts." Such an allegation is insufficient under *Bandemer;* the plurality in that case specifically cautioned that such a presumption of disregard would not be countenanced without proof, even in so-called "safe" districts. *Id.* at 2810. Nowhere do plaintiffs suggest that they can prove disregard by any means other than by inference from the election results, a method which *Bandemer* removes from our purview.

A further example of how the complaint fails to measure up is contained in the following passage:

> A.B. 2X locks in grossly disproportionate election results and has other invidious effects including, without limitations, the destruction of Republican incumbencies, the wasting of Republican votes, the minimization of Republican voters' opportunity to elect congressmen of their choice, the systematic elimination of political competition, discrimination based on political association and other effects as detailed below.

Complaint at 13. Obviously, plaintiffs have attempted to couch this allegation in terms of *Bandemer*'s two prongs.

However, all of the alleged "other invidious effects" are merely different ways of repeating central allegation that A.B. 2X causes disproportionate election results. The language "discrimination based on political association" *might* be considered to allege an effect of the kind needed, but this single statement is conclusory and it is not supported by any other inference-generating facts alleged in the complaint.

The only other "effect" alleged that is different from a mere claim of disproportionate election results is the allegation that the "bizarre and irregular" shapes of the districts cause voter confusion and apathy and make it difficult for congressmen to communicate with their constituents. However, this allegation is not limited to Republican voters or congressmen; it applies equally to all voters and congressmen affected by the plan. Nothing in the complaint suggests that somehow Republican voters are differentially affected by the alleged apathy. In addition, this argument was raised by the plaintiffs in *Bandemer*, *see* 106 S.Ct. at 2833 (dissenting opinion), but the plurality did not even consider it worthy of comment.

Plaintiffs protest that the only factual deficiency in *Bandemer* was that the plaintiffs there relied *only* on the results of a single election, and the district court specifically refused to find that that election was a reliable prediction of future elections. *See Bandemer* at 2812. Plaintiffs maintain that it is sufficient to show that they cannot achieve proportionate representation throughout the 1980's. While it is possible that plaintiffs have cured the *Bandemer* plaintiffs' deficiency in this one regard, we disagree with their argument that that was the only deficiency apparent in the case. The plurality opinion specifically required "a history (actual or projected) of disproportionate results . . . *in conjunction with* [other] indicia." *Id.* at 2814 (emphasis added). We cannot accept plaintiffs' invitation to ignore the second prong of the "threshold effects" test. Accordingly, plaintiffs first cause of action must be dismissed.

D. Leave to Amend

Before moving on to consider plaintiffs' other constitutional claims, we next consider whether plaintiffs should be granted another opportunity to amend their complaint. For the following reasons, we believe such an opportunity would be unavailing.

Our major reason for refusing another amendment is that the history of this litigation indicates, both implicitly and explicitly, that the Republicans have taken their best shot. Plaintiffs second amended complaint was based on the district court opinion which the Supreme Court reversed in *Bandemer*. After that reversal, we gave plaintiffs an opportunity to amend their complaint to attempt to state a claim in light of *Bandemer*. Plaintiffs had the *Bandemer* opinion to work with, and they have acknowledged in their moving papers that *Bandemer* requires something more than disproportionate election results (although they dispute the extent of this requirement), yet their third amended complaint is notably devoid of material allegations on this score. Although the complaint uses language similar to that used in *Bandemer*, such as "other invidious effects" and "[a lack of] fair and effective representation," this conclusory language cannot disguise the fact that the only factual basis underlying these claimed effects is plaintiffs' assertion of disproportionate underrepresentation. It is all too easy to infer from this studious avoidance of *any* material allegations of non-election based "effects" that plaintiffs realize that no such effects exist.

We do not have to rely solely on inference, however, because we repeatedly invited plaintiffs at oral argument to advise whether they were aware of any additional facts which would strengthen their complaint, and plaintiffs repeatedly declined our invitation to call such facts to the attention of the court. This colloquy, which is set forth in

the margin,[5] amply demonstrates plaintiffs' acknowledgement of their inability to come forward in good faith with any additional allegations supportable by evidence in court. For this reason, we conclude that further opportunity to amend would be unavailing.

We believe that plaintiffs' litigation posture is itself sufficient reason to dispense with further attempts at amend-

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[5] The Court: "Do you believe that you have now, in your first claim, you have set forth the necessary showing for a claim of equal protection violation as the Court has said in *Bandemer?* Are you prepared to rest on that?

Mr. Parrinello [Counsel for Plaintiffs]: We believe that we have your honor. But out of an abundance of caution, if the court feels that there are other things that could be alleged that would be helpful to the court, . . . I would request the opportunity to understand what those facts were that the court felt were important, and —

The Court: I don't think we have any concern one way or the other. It's your complaint that you have got to defend.

* * *

Mr. Parrinello: We believe the complaint states a claim under *Bandemer v. Davis.*

The Court: You are prepared to stand on it?

Mr. Parrinello: We are prepared to stand on it.

The Court: There is nothing else of great significance at this time that you believe would make any difference, add to it in substantial particulars which you think we ought to have before us before we rule?

Mr. Parrinello: May I have a minute to discuss that with my counsel?

* * *

[Counsel was given an opportunity to confer while defendants made their reply argument.]

The Court: Do you think you can improve the complaint in any way?

Mr. Parrinello: Your honor, we'll stand on the complaint as alleged."

Reporter's Transcript of Proceedings, December 5, 1986, at 59-60 and 67.

ment. However, we also may take judicial notice of other facts which demonstrate that California Republicans are far from being effectively "shut out" of the political process. Instead, California Republicans represent so potent a political force that it is unnecessary for the judiciary to intervene, as we would be constrained to do to protect the trampled rights of a disadvantaged political or racial minority.

Chief among our observations is our undisputed knowledge that California Republicans still hold 40% of the congressional seats, a sizeable bloc that is far more than mere token representation. It simply would be ludicrous for plaintiffs to allege that their interests are being "entirely ignore[d]" in Congress when they have such a large contingent of representatives who share those interests. We also note that California has a Republican governor, and one of its two senators is a Republican. Given also that a recent former Republican governor of California has for seven years been President of the United States, we see the fulcrum of political power to be such as to belie any attempt of plaintiffs to claim that they are bereft of the ability to exercise potent power in "the political process as a whole" because of the paralysis of an unfair gerrymander.

An additional fact further strikes us as extremely indicative of the political power of Republicans in California: plaintiffs admit that the Republicans were able to overturn the original redistricting bill, A.B. 301, through resort to California's referendum process. This display of California Republicans' political might demonstrates their ability to protect themselves from political subjugation. Plaintiffs complain that their effort was undone by the passage of A.B. 2X, but they cannot satisfactorily explain why there was not available a return to the same populace which had so recently supported them in their struggle for fair representation. We do not suggest that plaintiffs were subject to any kind of "exhaustion" requirement, but we note

that a resource which the pleadings show they indulged in at the outset has inexplicably not been accounted for. We do not require plaintiffs to resort to the state referendum procedure; we are merely cognizant that the third amended complaint is mute as to why it was not an available tool open to them while simultaneously pursuing their state and federal legal remedies. A petition signed by more than 5% of the voters would have prevented A.B. 2X from taking effect until after a referendum took place. A successful referendum vote would have killed the gerrymander, because a Republican governor had taken office. In a practical and realistic sense, we cannot ignore this very real example of the California Republicans' political power simply because they have not elected to exercise it when a similar situation arose again.[6]

A quick comparison with the facts of the racial gerrymandering cases on which *Bandemer* was based demonstrates the distance of the Republicans from alleging a claim. For example, in *Rogers v. Lodge,* 458 U.S. 613 (1982), Blacks constituted 38% of the voters in Burke County Georgia, but had never won a single seat. In *Mobile v. Bolden,* 446 U.S. 55 (1980), Blacks constituted "about one-third of the electorate" but had never won a single seat. In cases under the Voting Rights Act, the Court has emphasized that "minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate

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[6] Plaintiffs complain that we are using judicial notice of facts to determine the ultimate issue, i.e., whether Republicans' political power has been unfairly diluted by A.B. 2X. They argue that such a determination is improper on a motion to dismiss. We note initially that when matters outside the pleadings are presented on a motion to dismiss, we may treat the motion as one for summary judgment under Rule 56. Fed. R. Civ. Pro. 12(b)(6). However, we do not view our uncontested judicial observations as a formal ruling under either Rule; we merely take notice of these facts as additional support for our ruling that plaintiffs need not be given any additional opportunity to amend.

effectively in the political process." *Thornburg v. Gingles*, ___U.S. ___, ___, 106 S.Ct. 2752, 2764 (1986). Republicans in California cannot claim to have been treated as political pariahs; they have been a formidable, and sometimes dominant, force. On this point, we agree with the defendants that "even the bounds of normal political exaggeration are exceeded when the Republicans of California attempt to suggest that their political role can even be spoken of in the same breath as that of the Blacks of Burke County, Georgia and Mobile, Alabama." Democratic Congressional Delegation's Memorandum in Support of Motion to Dismiss, at 26.

We are convinced that there is no credible way in which plaintiffs could amend their complaint to state a claim under *Davis v. Bandemer*, nor have they formally sought to do so. Therefore, plaintiffs' first cause of action is dismissed with prejudice.

II. SECOND CAUSE OF ACTION

Plaintiffs' second contention is that A.B. 2X violates Article I, Section 2 of the Constitution, which provides:

> The House of Representatives shall be composed of Members chosen every second Year by the People of the several States . . .

Article I, Section 2 must be read in conjunction with Section 2 of the Fourteenth Amendment, which provides:

> Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State. . .

As interpreted by the Supreme Court, Article I, Section 2 prevents a State from creating congressional districts of unequal population. "The history of the Constitution, particularly that part relating to the adoption of Art. I, § 2, reveals that those who framed the Constitution meant that,

no matter what the mechanics of an election, whether statewide or by districts, it was population which was to the basis of the House of Representatives." *Wesberry v. Sanders*, 376 U.S. 1, 9 (1964). Accordingly, the Court has invalidated redistricting plans containing even minor population variances that were "not the result of a good-faith effort to achieve population equality." *Karcher v. Daggett*, 462 U.S. 725, 727 (1983). In all of these cases, the Court has emphasized that "equal representation for equal numbers of people [is] the fundamental goal for the House of Representatives." *Wesberry*, 376 U.S. at 18; *see also Karcher*, 462 U.S. at 730; *Kirkpatrick v. Preisler*, 394 U.S. 526, 530 (1969).

Plaintiffs concede that A.B. 2X does not violate the equal population rule.[7] Thus, if Article I, Section 2 requires nothing more, then the motion to dismiss must be granted.

Plaintiffs' argument that Article I, Section 2 does require more is based on the statement from *Wesberry* that "the command of Art. I, § 2 . . . means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." 376 U.S. at 7-8. Seizing on the concept of "worth," plaintiffs argue that Republican votes in California are "worth" less than Democratic votes because A.B. 2X places Democratic majorities in a disproportionately large number of districts.

Plaintiffs' argument reads too much into *Wesberry*. The Supreme Court itself has recognized, albeit in dicta, that "population alone has been the sole criteria of constitutionality in congressional redistricting under Art. I, § 2 . . ." *Mahan v. Howell*, 410 U.S. 315, 322 (1973). The cases decided under Article I, Section 2, from *Wesberry* to the

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[7] As originally enacted, A.B. 2X did contain population variances which exceeded permissible limits, but Secretary of State Eu remedied that defect by making 21 administrative corrections to the plan. Plaintiffs have foregone their claim that these corrections were implemented in violation of State law.

present, fully support such a conclusion. Indeed, the Court has even indicated a willingness to accept a certain amount of political maneuvering so long as the core constitutional concern—population equality—was protected:

> [The] argument that deviations from numerical equality are justified in order to inhibit legislators from engaging in partisan gerrymandering is no more than a variant of the argument, already rejected, that considerations of practical politics can justify population disparities.

Kirkpatrick, 394 U.S. at 534. This reasoning is inconsistent with the notion that partisan gerrymandering is itself an Article I, Section 2 violation.

Our reading of *Kirkpatrick* is confirmed by *Karcher*, in which the court stated:

> *Kirkpatrick* does little to prevent what is known as gerrymandering. *Kirkpatrick's* object, achieving population equality, is far less ambitious than what would be required to address gerrymandering on a constitutional level.

462 U.S. at 734 n.6 (citations omitted).[8]

Thus, the Court has made it clear that Article I, Section 2 only proscribes districts of unequal population. Claims

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[8] Plaintiffs also rely on *Daggett v. Kimmelman*, 580 F. Supp. 1259 (D.N.J.), *aff'd mem.*, 467 U.S. 1222 (1984), where the three-judge district court, in choosing a redistricting plan to replace the one struck down in *Karcher v. Daggett*, specifically declined to pick a plan which embodied "an intentional gerrymander in favor of certain Democratic Representatives." 580 F. Supp. at 1262. However, *Daggett* only involved the *remedial* stage of the litigation, *after* a violation of Article I, Section 2, had been found. The Court specifically stated: "[w]e need not consider how [the proposed plan] would have fared had it been validly enacted by the State of New Jersey." *Id.* Thus, *Daggett* cannot be read as holding that a partisan gerrymander, without more, violates Article I, Section 2.

regarding the political makeup of those districts must be judged by the more rigorous standards of the Fourteenth Amendment, as outlined in *Davis v. Bandemer*. Accordingly, plaintiffs second cause of action must be dismissed.

III. THIRD CAUSE OF ACTION

Plaintiffs' next contention is that A.B. 2X violates the First Amendment by "penalizing Republican voters solely because of their party affiliations, political beliefs and associations and by chilling public debate on issues of public importance."

It is well-settled that the "First Amendment protects political association as well as political expression." *Buckley v. Valeo*, 424 U.S. 1, 15 (1976). However, plaintiffs have failed to explain *how* A.B. 2X penalizes the exercise of their First Amendment rights. Plaintiffs assert that A.B. 2X "negat[es] the effect of plaintiffs' votes and the votes of members of their party," but this claim ignores the fact that Republican votes were sufficiently effective to elect 18 Representatives.

Plaintiffs argue that this case is similar to the ballot-access cases, such as *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Williams v. Rhodes*, 393 U.S. 23 (1968), in which the Court struck down restrictive election rules which effectively excluded independent and third-party candidates from the ballot. Those cases are inapposite to the instant situation. Plaintiffs here are not prevented from fielding candidates or from voting for the candidate of their choice. The First Amendment guarantees the right to participate in the political process; it does not guarantee political success.

Plaintiffs maintain that *Williams* protects the "right of qualified voters, regardless of political persuasion, to cast their votes *effectively*," 393 U.S. at 30 (emphasis added), and that their votes are rendered ineffective in those districts where there is a Democratic majority. We reject this

contention. As the Court stated in *Bandemer:* "[a]n individual or a group of individuals who votes for a losing candidate is usually deemed to be adequately represented by the winning candidate and to have as much opportunity to influence that candidate as other voters in the district. . . . This is true even in safe districts where the losing group loses election after election." 106 S.Ct. at 2810.[9] Although plaintiffs have generally alleged that Democratic incumbents "need [not] attend to the views of fragmented and submerged Republican minorities in their districts," they pointedly do not allege that Democratic representatives have in fact "entirely ignore[d]" the interests of those voters. *Id.*

Finally, the argument that A.B. 2X "chills" meaningful debate on political issues is wholly without merit. The concept of a "chilling effect" is associated with the doctrine of overbreadth, and describes the situation where persons whose expression is protected are deterred from exercising their rights by the existence of an overly broad statute regulating speech. *See, e.g., New York v. Ferber,* 458 U.S. 747, 768, 772 & n.27 (1982). While plaintiffs may be discouraged by their lack of electoral success, they cannot claim that A.B. 2X regulates their speech or subjects them to any criminal or civil penalties for engaging in protected expression.

Plaintiffs have failed to allege a violation of their First Amendment rights. Accordingly, plaintiffs third cause of action must be dismissed.

IV. FOURTH CAUSE OF ACTION

Plaintiffs' final contention is that A.B. 2X violates Article IV, Section 4 of the Constitution, which provides that

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[9] Although *Bandemer* involved an equal protection challenge, the observation is equally applicable to a First Amendment claim. The Court in *Williams* noted the overlapping nature of the right to association and the right to vote. 393 U.S. at 30.

"[t]he United States shall guarantee to every State in this Union a Republican Form of Government . . ."

This contention is easily dismissed on the authority of *Baker v. Carr*, 369 U.S. 186, 223-24 (1962), and the cases cited therein. In *Baker*, the Court noted that it "has consistently held that a challenge to state action based on the Guaranty Clause presents no justiciable question." *Id.* at 224. With respect to the reapportionment challenge before it, the Court specifically stated that "any reliance on [the Guaranty] clause would be futile." *Id.* at 227. This result is not altered by *Bandemer*'s holding that an equal protection challenge to a partisan gerrymander is justiciable; *Baker* specifically distinguished the equal protection claim before the Court from the non-justiciable claims based on the Guaranty Clause.

Accordingly, plaintiffs fourth cause of action must be dismissed as presenting a non-justiciable question.

CONCLUSION

The tortured history of this litigation is one of repeated attempts by the plaintiffs to frame a complaint which could withstand both a motion for abstention and a motion to dismiss. These repeated attempts have come to naught and have demonstrated that plaintiffs are unable to state a federal constitutional claim.

IT IS THEREFORE ORDERED that defendants' motion to dismiss plaintiffs' third amended complaint is GRANTED with prejudice.

Dated: April 19, 1988

C.F.P.
Cecil F. Poole
United States Circuit Judge

BADHAM v. EU, No. C 83 1126 RHS

Zirpoli, District Judge, concurring:

I must accept the Supreme Court's ruling "that political gerrymandering cases may properly be justiciable under the Equal Protection Clause." *Davis v. Bandemer,* ___U.S. ___, 106 S.Ct. 2797 (1986). Nevertheless, the factors that motivated gerrymandering in the present case are no more reprehensible than those found in *Bandemer,*[1] and do not constitute a threshold showing of discriminatory vote dilution required for a prima facie case of equal protection violation.

ALFONSO J. ZIRPOLI
ALFONSO J. ZIRPOLI
United States District Judge

[1] "Mr. Sussman: What were the political factors?

"Mr. Dailey: We wanted to save as many incumbent Republicans as possible." *Bandemer,* 106 S.Ct. at 2802, n.5.

Badham v. Eu, No. C-83-1126-RHS

Schnacke, District Judge, dissenting:

I must respectfully dissent. A statement of my reasons will be filed in due course.

ROBERT H. SCHNACKE
ROBERT H. SCHNACKE
United States District Judge

Counsel

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John K. Van De Kamp, Attorney General, and Robert E. Murphy, Deputy Attorney General, San Francisco, California, for Defendant Secretary March Fong Eu.

Joseph Remcho, Kathleen J. Purcell, and Charles C. Marson, Remcho, Johansen & Purcell, San Francisco, California, for Defendant-Intervenor Assembly of the State of California.

Richard H. Borow, Jonathan H. Steinberg, and Bruce A. Wessel, Irell & Manella, Los Angeles, California, for Defendants-Intervenors Members of the California Democratic Congressional Delegation.

APPENDIX B

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UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT E. BADHAM, ROBERT NAYLOR, ERIC SEASTRAND, ALDO SILVESTRI, MICHAEL W. COBB, FRANK O. VERLOT, DONNA S. RICHARDSON, PETER SCHRAGER, JANE BAKER, CHARLES A. MEYER, KIRK LINDSEY, DONALD DRISCOLL, ROGER T. ERICKSON, D.D.S.,	Case No. C-83-1126RHS THREE JUDGE COURT NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES
Plaintiffs and Appellants,	
vs.	
MARCH FONG EU, Secretary of State of the State of California,	

Defendant and Appellee,)
)
ASSEMBLY OF THE STATE OF)
CALIFORNIA, THE CALIFORNIA)
DEMOCRATIC CONGRESSIONAL)
DELEGATION,)
)
Intervenors and Appellees.)
)
)

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE IS HEREBY GIVEN that plaintiffs hereby appeal to the Supreme Court of the United States from the final judgment of the three-judge district court entered on April 21, 1988, dismissing with prejudice the Third Amended Complaint in this action.

This appeal is taken pursuant to section 1253 of Title 28 of the United States Code.

Date: April 28, 1988

NIELSEN, MERKSAMER,
HODGSON, PARRINELLO & MUELLER
By: /s/ JAMES R. PARRINELLO
JAMES R. PARRINELLO
Attorneys for Plaintiffs and Appellants

APPENDIX C

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FILED
October 1, 1986

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT E. BADHAM, ROBERT NAYLOR, ERIC SEASTRAND, ALDO SILVESTRI, MICHAEL W. COBB, FRANK O. VERLOT, DONNA S. RICHARDSON, PETER SCHRAGER, JANE BAKER, CHARLES A. MEYER, KIRK LINDSEY, DONALD DRISCOLL, ROGER T. ERICKSON, D.D.S.,	) No. C-83-1126RHS)) THREE-JUDGE) COURT))THIRD AMENDED) COMPLAINT
Plaintiffs,	)
vs.	)
MARCH FONG EU, Secretary of State of the State of California,	)
Defendant,	)

ASSEMBLY OF THE STATE OF CALIFORNIA, THE CALIFORNIA DEMOCRATIC CONGRESSIONAL DELEGATION,

Intervenors.

Plaintiffs allege as follows:

FIRST CAUSE OF ACTION

(Fourteenth Amendment)

1. Plaintiff Robert E. Badham is the Congressman for the 40th Congressional District and a registered Republican voter. Plaintiff Robert Naylor is a registered Republican voter and a resident of the 12th Congressional District. Plaintiff Eric Seastrand is a registered Republican voter and a resident of the 16th Congressional District. Plaintiff Aldo Silvestri is a registered Republican voter and a resident of the 12th Congressional District. Plaintiff Michael W. Cobb is a registered Republican voter and a resident of the 12th Congressional District. Plaintiff Frank O. Verlot is a registered Republican voter and a resident of the 12th Congressional District. Plaintiff Donna S. Richardson is a registered Republican voter and a resident of the 11th Congressional District. Plaintiff Peter Schrager is a registered Republican voter and a resident of the 11th Congressional District. Plaintiff Jane Baker is a registered Republican voter and a resident of the 11th Congressional District. Plaintiff Charles A. Meyer is a registered Republican voter and a resident of the 15th Congressional District. Plaintiff Kirk Lindsey is a registered Republican voter and a resident of the 15th Congressional District. Plaintiff Donald Driscoll is a registered Republican voter and a resident of the 16th Congressional District. Plaintiff Roger T. Erickson, D.D.S. is a registered Republican voter and a resident of the 16th Congressional District. Each plaintiff as a registered Republican is affiliated with the State Republican Party and associates with others similarly situated across the state to advance and advocate commonly held policies and beliefs by, among other things, supporting and voting to elect Republican candidates for congressional office and thereby to transform mutually held beliefs into public policies. Each plaintiff predictably votes for Republican candidates for public office.

2. In California, there are identifiable groups of voters whose voting behavior is constant and can be ascertained from past elections and predicted in future elections. Republican voting strength can be so ascertained and predicted. The core of Republican voting strength is registered Republicans to which are added other voters who predictably and do in fact vote for Republican candidates. The geographical distribution in California of this group of Republican voters is sufficiently ascertainable that it could have been and in fact was taken into account in drawing the congressional district boundaries contained in Assembly Bill 2X, California's current redistricting statute; the same is true of Democratic voting strength.

3. Plaintiffs are members of an identifiable, quantifiable and politically salient group of voters whose voting behavior can be ascertained and predicted. Plaintiffs are Republican voters who in fact vote for Republican candidates and will predictably do so in the future. Plaintiffs, both individually and as members of the larger statewide group of Republican voters, have suffered harm and irreparable damage because Assembly Bill 2X operates to minimize or cancel out their votes and voting strength. Plaintiffs' votes are persistently degraded and diluted both in individual districts across the state and on a statewide basis. Republican voters including plaintiffs do not have the same opportunity to elect candidates of their choice to the United States House of Representatives as do Democrats; in fact their opportunity to do so is decidedly diminished by A.B. 2X which was designed for that purpose.

4. This Court has original jurisdiction of this action pursuant to 28 U.S.C. §§ 1343 (3) and (4), and Plaintiffs have a right to bring this suit pursuant to 42 U.S.C. §§ 1983 and 1988. Plaintiffs also seek declaratory relief pursuant to the provisions of 28 U.S.C. §§ 2201 and 2202.

5. At Plaintiffs' request, a three-judge Court was convened to hear and determine this action pursuant to the

provisions of 28 U.S.C. § 2284(a). Convocation of a three-judge District Court was required because this action challenges the constitutionality of the redistricting of congressional districts in the State of California, as embodied in Assembly Bill 2X, Chapter 6, 1st Extraordinary Session of the 1983-4 California Legislature (hereinafter "A.B. 2X") as implemented by state election officials.

6. Pursuant to 28 U.S.C. § 2284(b)(2), notice of this action has been given to the Governor and the Attorney General of the State of California by sending each via certified mail a copy of the original Complaint.

7. Defendant MARCH FONG EU is Secretary of State of the State of California, which is a statewide elective office held by defendant Eu, a Democrat, since 1974. In her capacity as Secretary of State, defendant Eu is Chief Election Officer of the state, pursuant to California Elections Code section 12172.5. Defendant Eu is sued in her representative capacity only. This action will have statewide application.

8. This case arises under Section I of the Fourteenth Amendment of the Constitution of the United States which provides in pertinent part:

> No State shall make or enforce any law which will abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

9. Pursuant to the 1980 Federal Decennial Census, the population of the State of California is 23,667,902 persons, entitling the State to 45 representatives to the United States House of Representative. Under the 1970 census, California had been entitled to 43 congressional seats. The re-

districting plan for those 43 seats had been prepared by Special Masters appointed by the California Supreme Court in 1973 after the Legislature and Governor failed to reach agreement. *Legislature v. Reinecke*, 10 Cal.3d 396 (1973). The Special Masters first adopted detailed objective criteria for redistricting and then drew district lines according to those criteria (hereafter the "Special Masters' Plan") The Special Masters' districts were logical, compact and reflective of communities of interest. By 1980, Republicans held 21 of the 43 seats. In September of 1981, in accordance with the results of the 1980 census, Assembly Bill 301 ("A.B. 301" hereinafter) was enacted into law as the redistricting statute for California's Congressional districts for the 1980s. At the time both houses of the California Legislature were controlled by Democratic Party majorities; A.B. 301 was passed by party-line votes of 44 to 29 in the Assembly and 21 to 15 in the Senate. Democratic Governor Brown signed A.B. 301 into law immediately after its passage.

10. The process by which A.B. 301 was passed was aberrant and highly irregular. It was not similar at all to the regular legislative process by which important and complex laws are normally enacted in California. In the enactment of A.B. 301, Republican members of the Legislature were totally excluded from the secretive, substantive work of designing the congressional district boundaries enacted by the Democratic majority; the districts delineated in the bill were primarily the work of Democratic members of the Congressional Delegation; no hearing on the proposed district boundaries was held in any committee in either house of the Legislature, despite the fact that the joint rules of the State Senate and Assembly called for such hearings by the Assembly and Senate Elections and Reapportionment Committees. The only public hearing, such as it was, on the proposed district boundaries was one, six member conference committee hearing at which a single set of very rough district boundary maps

was reluctantly unveiled; this entire "public hearing process" took about an hour and concluded with the perfunctory adoption of a conference report recommending the proposed boundaries on a 4-2 party-line vote, Democratic members in the majority.

11. Shortly after its passage, Californians who opposed A.B. 301 circulated referendum petitions and obtained more than 800,000 signatures of California voters, thereby placing a referendum election on A.B. 301 on the June 1982 statewide ballot. At the June election A.B. 301 was overwhelmingly rejected by more than 60% of the popular vote in a heated and expensive election battle. Nevertheless, the November, 1982 congressional elections took place in the rejected A.B. 301 districts pursuant to a prior order of the California Supreme Court in *Assembly v. Deukmejian*, 30 Cal.3d 638 (1982). The use of the rejected A.B. 301 districts resulted in the election in November, 1982 of 28 Democrats and only 17 Republicans, to the House of Representatives; this was a drastic departure from the virtual parity in seats won in 1980 by candidates of the two major parties, where Democrats won 22 seats and Republicans won 21 seats.

12. The rejection of A.B. 301 in the June, 1982 referendum election meant that a new congressional redistricting statute had to be enacted for the 1984 elections and the rest of the decade. The California Legislature paid virtually no attention to the task of drawing new congressional districts until the November, 1982 general election votes were tabulated; the results established that a Republican, George Deukmejian, had won an upset victory and would be the next Governor, and that Democratic Governor Brown would hold office only until January 2, 1983. Democratic interest in passing a new Congressional redistricting statute heightened considerably, even though the next congressional primary election was 19 months away. Then-Governor Brown immediately called the first extraordinary session of the 1983-84 California Legislature,

which convened on December 6, 1982. The agenda for the extraordinary session was set by Governor Brown's call and included redistricting. On December 6, the date the extraordinary session convened, a proposed congressional redistricting bill, Assembly Bill 5X, was introduced by Democrat Assemblyman Richard Alatorre in skeletal form ("A.B. 5X" hereinafter). A.B. 5X was only a "vehicle" bill; no description of the proposed districts was placed in the bill until late in the day of December 27 when it was amended on the Assembly floor to describe the proposed congressional districts but only with long listings of census tracts. Prior to this amendment, no Republican member of the Legislature was informed of the proposed district boundaries or had any substantive involvement with the drafting process. The amended bill passed the Assembly on December 28, 1982, on a party-line vote of 41 to 29, with the Democratic members of the Assembly in the majority.

13. A.B. 5X was not passed by the State Senate; this was because California Constitution, Article IV, Section 8 required that a bill be read on three separate days in each legislative house prior to final passage unless such reading is dispensed with by a rollcall vote, two-thirds of the membership concurring. Because the Legislature was scheduled to adjourn on December 29, time was too short to permit compliance with this three-reading requirement before then-Governor Brown left office; a two-thirds vote could not be garnered to dispense with the rule because Republican Senators would not be a party to it. The Democratic majority solved this apparent dilemma in another way, utilizing Assembly Bill 2X, the Board of Equalization reapportionment bill which had previously passed both legislative houses and had been sent to Governor Brown for signature. On the morning of December 29, 1982, in a highly unusual and extremely rare procedural move, the Democratic Senate leadership ordered that Assembly Bill 2X be removed from Governor Brown's desk and returned to the Senate.

The order was complied with. The Democratic leadership simultaneously directed the Legislative Counsel to prepare large-scale amendments to Assembly Bill 2X consisting of the congressional district descriptions in A.B. 5X with minor changes. Further changes to the proposed congressional districts were made on the Senate floor by handwritten interlineation of the Legislative Counsel's prior typewritten amendments because the Democratic leadership did not want to take the time to return the bill to the Legislative Counsel to prepare additional, formal amendments. The amendments were introduced by Democratic Senator David Roberti late on the afternoon of December 29 and the bill was debated, being roundly condemned by Republican Senators.

14. On the evening of December 29, the bill (now called A.B. 2X) came up for a final vote in the Senate and was passed by 21 to 10, 21 votes being the minimum number of Senators required to pass legislation. The vote was on strict party lines with 21 Democratic Senators in the majority and 10 Republicans in the minority. A.B. 2X was then immediately returned to the Assembly for concurrence. This was accomplished a few hours later by a strict party-line vote of 42 to 17, late in the evening of December 29, 1982.

15. The Legislature then adjourned and on Sunday, January 2, 1983, several hours before leaving office, Governor Brown signed A.B. 2X into law. A true copy of A.B. 2X is attached hereto as *Exhibit A* and incorporated herein by this reference.

16. Republican members of the Legislature were excluded from virtually all substantive involvement in constructing the A.B. 2X districts and from the legislative process that resulted in its enactment, as they had been in the case of A.B. 301. When the bill was voted upon, it consisted entirely of long lists of census tracts and tract portions. Despite repeated requests, no accurate or ade-

quately-detailed maps of the A.B. 2X district boundaries were provided to Republican legislative members or staff. The proposed congressional districts were never the subject of a committee hearing in either their A.B. 5X or A.B. 2X form. Again this secretive and truncated process was highly irregular and unusual for legislation of such great public importance.

17. The only reason for processing A.B. 2X with such urgency was to prevent the incoming Republican Governor from participating in the redistricting process. The speed and secrecy of the legislative process simultaneously was intended to and did insulate A.B. 2X and its proponents from the public outcry which would have resulted had their plans been made public earlier. Afterward there was widespread public condemnation of this truncated and transparently partisan legislative process, as reflected in newspaper articles, editorials and commentaries from one end of the State to the other, a sample of which is contained in Exhibit B hereto and incorporated by reference. The Legislature's haste resulted in numerous technical errors (including several noncontiguous districts) in A.B. 2X as it was signed into law and chaptered on January 2, 1983. There were so many errors of consequence that, many weeks after the bill was passed, the Democratic Chairperson of the Assembly Elections and Reapportionment Committee ordered staff to prepare a list of 21 administrative corrections to A.B. 2X. These corrections were then transmitted to and implemented by the democratic Secretary of State two months after A.B. 2X was signed into law and after the original complaint was filed in this case. A true and correct copy of the Secretary of State's March 17, 1983 letter to local election officials promulgating these corrections is attached hereto as Exhibit C and incorporated herein by this reference.

18. These corrections to A.B. 2X moved approximately 38,000 people among various districts. One such correction moved approximately 8,600 people from Congressional Dis-

trict 16 to Congressional District 12; without this adjustment, the population deviations in A.B. 2X would have exceeded 3% in violation of Article I, § 2 of the Constitution of the United States. The corrections were never the subject of formal legislative action or even committee hearings. No Republican legislator was informed of the corrections; they first learned of the corrections from local election officials who had received the Secretary of State's March 17, 1983 letter. Even one Democratic Senator who cast a decisive vote for A.B. 2X objected to the process by which these corrections were made as well as to their substantive content. The fact that corrections of such magnitude had to be made underscores the undue speed with which the Legislature acted in passing A.B. 2X. There was no legitimate reason for the Legislature to act on A.B. 2X with such haste; the only explanation for the legislative action was to force a blatant partisan gerrymander on an unwilling Republican legislative minority and on the public, hours before a Republican Governor took office. True and correct depictions of the congressional districts of A.B. 2X including the administrative corrections, all of which have been implemented, are attached hereto as Exhibits D and E and incorporated herein by reference. (Hereinafter the term "A.B. 2X" shall refer to the congressional districts contained in the bill but not the State Board of Equalization Districts therein.)

19. The rejected districts of A.B. 301 served as the building blocks and model for the A.B. 2X districts. Although physical territory and population were shifted between the new districts of A.B. 2X and the defunct A.B. 301 districts, the two plans are comparable in partisan impact. To the extent that A.B. 2X differs from A.B. 301 in partisan impact, it is that A.B. 2X fine tunes A.B. 301 by reinforcing the electoral advantage bestowed on Democrats with the information gained by the 1982 election results.

20. A.B. 2X is an intentional, invidious and effective gerrymander designed and functioning to dilute, minimize and/or cancel out the votes and voting strength of Republican voters across the state including plaintiffs and denies Republican voters including plaintiffs their right to fair and effective representation. As discussed in detail below, A.B. 2X carves up the state in such a way as to allocate congressional districts to Democrats in numbers far in excess of Democratic voting strength, and to Republicans in numbers far below Republican voting strength. The effect is to control and distort the composition of California's Congressional Delegation throughout the 1980s. Thus, A.B. 2X locks in grossly disproportionate election results and has other invidious effects including, without limitation, the destruction of Republican incumbencies, the wasting of Republican votes, the minimization of Republican voters' opportunity to elect congressmen of their choice, the systematic elimination of political competition, discrimination based on political association and other effects as detailed below. A.B. 2X represents one of the most, if not the most, egregious and effective partisan gerrymander of the 1980's. The architects of A.B. 2X artfully and successfully employed virtually everyone of the acknowledged gerrymandering techniques to design a discriminatory gerrymander against Republican voters including plaintiffs for exclusively partisan and personal motives. The partisan gerrymander achieved in A.B. 2X far exceeds the preexisting parameters of politics as usual in redistricting.

21. The partisan and personal objectives of the Democratic drafters of A.B. 2X were achieved through a computer assisted application of refined gerrymandering methodology to dismantle, merge and distort the Special Masters' pre-1982 congressional districts. The A.B. 2X districts will result in the persistent degradation of Republican voting strength and dilution of Republican votes both statewide and district-by-district throughout this decade.

The invidious effects of A.B. 2X are sufficiently serious to warrant federal court intervention. The methodology and effects of the A.B. 2X gerrymander include:

(a) Destruction of Republican congressional seats and the dismantling of represented Republican voting majorities by placing two or more Republican members of the United States House of Representatives in the same district, thereby arbitrarily eliminating three incumbent Republican members of Congress. Thus 1980 Republican incumbents in Districts 20 (Goldwater) and 21 (Fiedler) were both placed in new District 21, won by Fiedler. Republican Congressmen in Districts 22 (Moorhead) and 26 (Rousselot) were placed in new District 22, won by Moorhead. Republican Congressmen in District 33 (Grisham) and 35 (Dreier) were placed in new District 33, won by Dreier. Not surprisingly, no 1980 Democratic incumbent member of the House of Representatives had another Democrat incumbent placed in his or her district and all Democratic incumbents were reelected except for John Burton who retired and was succeeded by another Democrat, Barbara Boxer. Disparate treatment of incumbents, resulting in elimination of incumbent advantages, is a key gerrymandering tool.

(b) Depriving certain Republican incumbents of large portions of their former constituencies and depriving Republican majority constituencies of their elected representatives by fragmenting concentrations of Republican voting strength among two or more districts. For example, the core Republican voting base of Republican Congressman Dornan's District 27 under the Special Masters' Plan was fragmented into pieces which were allocated to numerous surrounding districts, many going to pack Republican District 42. This left no logical constituency from which incumbent Dornan could run. The new District 27 was much more Democratic in registration than the old 27th; it

was easily won in 1982 by Democratic Assemblyman Mel Levine.

(c) Manipulating district boundaries so as to create a Democratic voting advantage and minimize competition in the two additional congressional seats to which California was entitled as a result of the 1980 census; both of these new districts, 18 and 44, were won by Democrats, as were open seats created by the destruction of Republican incumbencies.

(d) Reducing Republican voting strength in marginally competitive districts by removing Republican voters or adding Democratic voting strength. For example District 2 under the Special Masters plan, which became District 1 under A.B. 2X was already a marginally Republican district. The district had net Democratic registration strength added to it, leaving the Republican incumbent vulnerable to a Democratic challenge. In 1982 the Republican incumbent lost the seat by a vote margin of 49.9% Democratic to 47.2% Republican. The seat was won by Democrat Assemblyman Doug Bosco. Democrats were also given a competitive edge in other previously marginal seats, including, without limitation, District 5 (which under A.B. 301 became District 6), District 11 and District 36.

(e) Preserving old district lines and core voting strength for Democratic incumbents. Unlike many of their Republican counterparts, no Democratic incumbent in 1980 had his or her district dismantled or made vulnerable by A.B. 2X.

(f) Packing of Republican voters including plaintiffs into congressional districts greatly in excess of the percentage needed to elect a candidate of their choice, thus wasting and diluting significant numbers of Republican votes and diminishing their effectiveness. For example, District 12 in the San Francisco Bay area,

an already solid Republican district, juts northward abruptly to pick up solid pockets of Republican voting strength around Hillsborough which naturally lies in District 11 which was won by a Democrat in 1982 and 1984. A colored map of District 12 is attached hereto as page 1 of Exhibit F which is incorporated herein by this reference. This practice of packing Republican voters is repeated in districts all over the State.

The examples contained in (a) through (f) above are for purposes of illustration and not limitation.

22. The contorted shapes of the A.B. 2X districts deviate substantially from objective criteria and effectively work to dilute Republican voting strength. The districts substantially diverge from a reasonable standards of compactness and arbitrarily ignore communities of interest. The boundaries of many of the districts twist and wind their way across the map of the state because to fragment and/or pack far flung pockets of Republican voting strength in order to limit Republican opportunities for electoral success. The uncouth, irregular and bizarre configurations of these districts are not necessitated by adherence to political subdivision or other geographical boundaries, and cannot be justified or explained except as indicia of deliberate and invidious partisan gerrymandering. The methodology described in paragraph 21, *supra*, manifests itself, in part, in the irregular, snakelike boundaries of A.B. 2X districts. To cite just a few examples of the relationship between tortured lines and packing or cracking:

(a) In the San Francisco Bay Area, District 6, which was a marginal Democratic seat under the Special Masters' Plan, meanders across marshlands and the bay to combine Democratic voting strength in Solano County (the Vallejo area) with Democratic strength in the northern tip of San Francisco, to dilute and submerge Republican strength in Marin County. This gave

rise to a narrow (52.4%) victory by a relatively unknown, last minute Democratic candidate in District 6 in 1982 which increased to 68% in 1984 with the significant benefits of incumbency. (See Exhibit F, page 1.)

(b) District 27 suddenly darts eastward in the middle section of the district to add solid Democratic votes to bolster the district's Democratic edge.

(c) In the San Diego area, the tortuous shape of District 44 was designed to pick up pockets of Democratic strength to guarantee a Democratic victory in this newly created district surrounded by Republican districts. District 44 carefully skirts the Republican voters who have been packed into Districts 41 and 45 which were both won in 1982 by the Republican incumbents with approximately 69% of the vote in each district. District 44 was won by a Democrat in 1982 and 1984. (See Exhibit F, page 3.)

(d) District 20 is an example of a district which ignores communities of interest as well as geographic regions. This district links expansive desert areas, mountain communities, central valley agricultural interests, metropolitan communities, and coastal areas in order to pack as many Republican voters as possible into one district.

(e) The City of Long Beach is divided by a dizzying line on the basis of partisan registration between the bizarrely shaped Districts 32 and 42 to pack Republicans into District 42 and safeguard the Democratic incumbent in District 32.

23. A.B. 2X violates numerous political boundary lines of cities and counties in its design of key districts to dilute Republican voting strength. These violations are, in key instances, necessitated only by partisanship. Because of their large populations, only 13 counties and 4 major cities

must be divided in forming congressional districts in the State of California. A.B. 2X places 37 California cities and 22 California counties in more than one congressional district. Certain of these splits are indicators of the gerrymander. A salient example is the division of the City of Fresno. (See Exhibit F, p. 1.) Fresno's population can be contained in a single district. Instead, its population is divided between districts to create a new Democratic District 18 for Assemblyman Richman Lehman. District 18 incorporates only parts of southern Stockton (the rest of Stockton is in District 14 which connects the City to the Oregon border), bypasses several nearby Central Valley cities to wind its way into the Sierra Nevada through Calaveras, Tuolomne, and Mono Counties, then hooks into the heart of Fresno to capture its Democratic voting strength including Assemblyman Lehman's home. District 18 was won by Assemblyman Lehman with 59.5% of the vote in 1982 and 67.3% in 1984. Counties are also strategically divided and dissected for partisan goals. Tiny Lake County's population, for example, can be easily contained in a single district. A.B. 2X divided the county between the First and Second Congressional Districts, in a complex trade-off of territory among districts solely for partisan purposes, including to enhance the Democratic edge in District 1. Riverside and San Bernardino Counties were dissected in order to create a Democratic seat in District 36 surrounded by Republican voting strength. (See Exhibit F, p. 2.) A.B. 2X even contains a non-contiguous district, District 27, which goes into the sea at Redondo Beach, around the Palos Verdes Peninsula, to San Pedro where it includes the harbor populations. Again the examples in this paragraph are for purposes of illustration and not limitation.

24. The bizarre and irregular A.B. 2X district configurations have pernicious effects in and of themselves by causing voter confusion and thus apathy about the identity of their Congressmember and any challengers; making it

difficult to recruit effective challengers to entrenched incumbents thereby giving incumbents an enormous advantage; increasing the difficulty and expense of campaigning thereby enhancing the advantage enjoyed by incumbents who have the benefit of public identification and ready access to the news media; increasing the difficulty of physical access of constituents to their Congressmember to obtain assistance on personal matters and to express their opinions on current issues; and making it more difficult for a Congressmember to represent a district with numerous, disparate and conflicting local and regional interests.

25. None of the foregoing deviations from rational criteria is required to redistrict in California. The criteria utilized by the Special Masters and the districts created thereby stand in dramatic contrast to the A.B. 2X districts. For example, a brief inspection of the maps of the Special Masters' Plan and A.B. 2X (attached as Exhibits G-1 and G-2, respectively) in the Los Angeles area, is revealing and demonstrates there is no need for the tortuous districts of A.B. 2X.

26. In enacting the districts of A.B. 2X, the Legislature was preoccupied with factors other than legitimate state goals such as population equality or fair treatment of minorities. The paramount concern of the Legislature in fashioning the congressional redistricting plan embodied in A.B. 2X was the enhancement of the electoral prospects and voting strength of Democrats to the detriment of Republican voters in disregard of the constitutional mandate of fair and effective representation for all California voters and equal protection of the laws. As a result of A.B. 2X, Republican voters, including plaintiffs, individually and as a group are substantially disadvantaged in their opportunity to influence effectively the political process in the election of members of the United States House of Representatives and their votes are diluted and made less effective than the votes of Democrats. A.B. 2X discrimi-

nates against plaintiffs and all Republican voters by purposely diluting, minimizing or canceling out their votes and voting strength statewide and in individual districts across the state. The effect of A.B. 2X is to divide up the State's congressional districts in such a way as to allocate a substantial and permanent majority of seats to Democratic party candidates in percentages far superior to the statewide voting strength of Democratic voters thereby maximizing the efficiency of Democratic votes and wasting Republican votes and rendering them ineffective. This arbitrary and discriminatory allocation of congressional districts enables virtually every Democratic incumbent to continue in office for the entire decade without competitive reelection challenges and insulates them from the need to be responsive to, or representative of the shifting opinions and convictions of California voters. The gerrymander becomes stronger and more immutable with each passing election due to the advantages of incumbency. In effect the drafters of A.B. 2X carved California up into 45 congressional districts in such a way as to pre-ordain the partisan makeup of California's delegation to the United States House of Representatives, arbitrarily allocating a substantial majority of such seats to Democrats despite the fact that relative two-party voting strength is at a minimum equal and growing more Republican with each passing election. Indeed, the A.B. 2X districts are manifest proof that gerrymanders can and do work if drawn with sufficient expertise and sophistication. This is demonstrated by the extreme disproportionality which now exists and which will continue to exist throughout this decade between the number of votes cast for Republican candidates and the number of Republican congressmen elected. In the November, 1982 election under A.B. 301, 48.4% of the two-party vote cast in congressional races in California was for Republican candidates and 51.6% for Democrats; yet, as a direct result of the gerrymander only 37.8% or 17 seats were won by Republicans and 62.2% or 28 seats

were won by Democrats. In the November, 1984 congressional elections under A.B. 2X, of the two-party vote approximately 50.1% was for Republican candidates and approximately 49.9% was for Democratic candidates. Republican candidates received more votes than Democrats but because of A.B. 2X's effective gerrymander, only 40% or 18 congressional seats were won by Republicans and 60% or 27 congressional seats were won by Democrats. (True and correct copies of the official Statement of the Vote for the 1982 and 1984 congressional elections are attached hereto as Exhibits H and I and incorporated herein by reference.) The one seat of 45 that changed hands in 1984 was District 38 (consisting of large portions of Orange County) and the circumstances there were unique. Robert Dornan, a well-known 1980 Republican incumbent from old District 27, which was dismantled in A.B. 2X, ran and won in new District 38 after moving his home there. The margin of victory was eight percentage points, the most competitive of any A.B. 2X district.

27. The 1982 and 1984 election results were the predictable consequences of the arbitrary partisan division and allocation of California's 45 congressional districts and are a reliable predictor of future consequences. The persistent degradation of Republican voting strength affected by A.B. 2X will continue through this entire decade. Given the configurations of the A.B. 2X district boundaries, the partisan composition of the districts and projections from past voting patterns, this continued frustration of the will of California voters can be reliably predicted to persist in the 1986, 1988, and 1990 congressional elections. Because of the partisan gerrymander, Republicans predictably cannot gain a majority of the California Congressional Delegation throughout the 1980's; the composition of the Delegation will remain virtually immutable in 1986 and change little if at all thereafter. (Plaintiffs request the Court to take judicial notice of the 1986 Congressional election results when they are tabulated.)

28. A.B. 2X has the further effect of minimizing and eliminating virtually all competition in congressional elections, depriving Republican voters as a group of the opportunity to effect election results on a statewide basis in individual districts thereby frustrating their ability to effectuate changes in public policy through the election of persons who share similar beliefs. In 1984, only two California Congressmembers were elected by a margin of victory of less than 10%; no Congressmember was elected by a margin of victory of less than 8% of the vote. Eight were elected by margins in excess of 50%; thirteen were elected by margins between 40% and 50%; nine were elected by margins between 30% and 40%; ten were elected by margins between 20% and 30%; and three were elected by margins between 10% and 20%. These substantial margins of victory minimize the potential of recruiting top-flight candidates with sufficient financial resources for serious partisan competition in virtually any of the districts. Entrenched Democratic incumbents will continue to be re-elected without need to attend to the views of fragmented and submerged Republican minorities in their districts and are insulated from those views by their overwhelming margins of victory. Despite traditional partisan competitiveness in California, A.B. 2X eliminates competition and will diminish effective representation of the views and beliefs of Republican voters in the composition of California's Congressional Delegation.

29. The California Legislature intentionally gerrymandered the 1983 congressional districts to dilute Republican votes, to minimize or cancel out the voting strength of Republican voters and to procure the assured election of the greatest number of Democratic Party candidates, thereby denying all Republican voters including plaintiffs their rights to equal protection of the laws and an equally-weighted vote, to fairly draw congressional districts, and to fair and effective representation in Congress. The history of A.B. 2X is one of unbridled partisanship and over-

riding personal interest evidenced by the fact that four Democratic Assemblymen were graduated to Congress. The passage of A.B. 2X reveals a series of official actions taken arbitrarily and capriciously and which were not necessary to further any legitimate state policy.

30. The relief sought herein does not conflict with any legitimate state goal. The congressional districts can be redrawn easily and quickly to comport with one-person, one-vote requirements and to provide an equal or greater level of minority representation than exists under A.B. 2X, while at the same time providing for fair and effective representation for all California voters.

31. For the foregoing reasons, A.B. 2X violates plaintiffs' constitutional rights under Section I of the Fourteenth Amendment to equal protection under the law to the redistricting of California through adherence to due process of law.

SECOND CAUSE OF ACTION

(Article I, Section 2)

32. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 31 inclusive of the First Cause of Action as if fully set forth in this Second Cause of Action. Plaintiffs do not believe they are required to prove intent under this cause of action but reserve the right to offer such proof if so required by the Court.

33. This case also arises under Article I, Section 2, of the Constitution of the United States which provides in pertinent part, that Members of the House of Representatives be chosen "by the People of the several states," thereby requiring that, as nearly as practicable, each person's vote in a congressional election must be equal.

34. A.B. 2X is an unjustifiable infringement of plaintiffs' constitutional rights under Article I, Section 2 of the United States Constitution.

THIRD CAUSE OF ACTION

(First Amendment)

35. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 31 inclusive of the First Cause of Action as if fully set forth in this Third Cause of Action. Plaintiffs do not believe they are required to prove intent under this cause of action but reserve the right to offer such proof if so required by the Court.

36. This case also arises under the First Amendment of the Constitution of the United States which protects the exercise of the fundamental rights of freedom of speech and association. A.B. 2X violates these freedoms by penalizing Republican voters solely because of their party affiliations, political beliefs and associations and by chilling public debate on issues of public importance.

FOURTH CAUSE OF ACTION

(Guarantee Clause)

37. Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 31 inclusive of the First Cause of Action as if fully set forth in the Fourth Cause of Action.

38. This case also arises under Article IV, Section 4 of the Constitution of the United States which provides that the United States shall guarantee to every State in the Union a republican form of government.

39. A.B. 2X violates this constitutional provision because it creates and results in a defective electoral structure for congressional districts in California, which structure violates and dilutes plaintiffs' rights under Article I, section 2 and the First and Fourteenth Amendments to the Constitution of the United States.

WHEREFORE, Plaintiffs respectfully pray:

1. That the Court declare that A.B. 2X is now and prospectively in violation of the Constitution of the United States and is now and prospectively null and void and of no further force and effect insofar as it establishes congressional districts for the State of California.

2. That the Court prelimarily and permanently restrain and enjoin defendant Secretary of State from ordering or conducting any electoral processes under A.B. 2X, from certifying the results of any such election, and from taking any other steps with respect to the election of Members of the United States House of Representatives, until there has been a further redistricting of Congressional districts.

3. That the Court order appropriate remedies, which could include referral to the California Legislature and Governor with guidelines to pass into law within a specific timeframe a new congressional redistricting statute; promulgation of congressional redistricting plan by appointment of Special Masters; solicitation and review of proposed congressional redistricting plans from interested parties or such other means as the Court deems appropriate.

4. That the Court retain jurisdiction of this action until such time as a congressional redistricting plan is promulgated in accordance with constitutional requirements.

5. That the Court award Plaintiffs their costs and reasonable attorneys' fees in connection herewith.

6. And that the Court enters such other and further relief as may, to the Court, seem just and proper.

DATED: October 1, 1986

Respectfully submitted,

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PARRINELLO & MUELLER

By: /s/ JAMES R. PARRINELLO
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APPENDIX D

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UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT E. BADHAM, ROBERT NAYLOR, ERIC SEASTRAND, ALDO SILVESTRI, MICHAEL W. COBB, FRANK O. VERLOT, DONNA S. RICHARDSON, PETER SCHRAGER, JANE BAKER, CHARLES A. MEYER, KIRK LINDSEY, DONALD DRISCOLL, ROGER T. ERICKSON, D.D.S., *Plaintiffs,* vs. MARCH FONG EU, Secretary of State of the State of California, *Defendant,*	No. C-83-1126RHS THREE-JUDGE COURT EXHIBITS TO THIRD AMENDED COMPLAINT

ASSEMBLY OF THE STATE OF CALIFORNIA, THE CALIFORNIA DEMOCRATIC CONGRESSIONAL DELEGATION,	)
Intervenors.	)

EXHIBIT A

Exhibit A of Plaintiffs' Exhibits to the Third Amended Complaint is the full text of A.B. 2X. Since this 88 page statute is expressed almost entirely in terms of census tracts, census enumeration districts, census block groups and blocks, without relation to maps, appellants believe its usefulness to the Court at this time would be limited. The full text of A.B. 2X is, however, codified at California Elections Code 30030, *et seq.*, Stats. 1983, C. 6, Sec. 3. 1st Ex. Sess.

EXHIBIT B

EXHIBIT B

[San Jose News, Dec. 9, 1982]

Reapportionment: They're at it again!

CALIFORNIANS said last June they didn't like the way the Legislature drew the boundary lines for 80 Assembly, 40 state Senate and 45 congressional districts. Now, the lawmakers are at it again, and this time they should give the people a piece of the action.

New Assembly and Senate reapportionment bills have been introduced, and hearings are scheduled next week in Sacramento and, in the case of the Senate plan, in San Francisco as well. The new congressional reapportionment bill hasn't been introduced yet, although Assemblyman Richard Alatorre, D-Los Angeles, the 1981 chairman of the Assembly Elections and Reapportionment Committee, is expected to carry this piece of legislation.

It all sounds busy and efficient, but unfortunately less is going on than meets the eye.

First, these scheduled hearings may be little more than window-dressing. They are being called hurriedly, with a minimum of advance publicity. How many interested individuals and organizations will be able to attend, and how seriously will the lawmakers take their suggestions? Past experience suggests the public will be heard but hardly heeded.

Second, neither the Assembly nor the Senate reapportionment committees intends to provide the public with detailed, district-by-district maps at any of the scheduled hearings. Witnesses, whoever they may be, will have virtually no opportunity to determine precisely how the new boundary lines will affect them, and that will make it all the more difficult for them to comment intelligently.

As planned, these "public hearings" will be little better than shams.

If the Legislature really wants to defuse public suspicion that it is breeding another gerrymander, it will schedule a series of hearings in both Northern and Southern California, publicize them widely and provide detailed maps to the press and public.

Capitol observers predict all three reapportionment bills, which will draw new legislative and congressional district lines to reflect population shifts, will be voted on the week before Christmas. The tightness of this schedule suggests the Legislature has no intention of pondering, much less acting on, the public's desires regarding reapportionment.

The Democrats control both houses of the Legislature now as they did in 1981, when they produced the gerrymander rejected by the voters, and the Democrats' hurry to get the job done before Christmas is understandable, if less than noble. Gov. Jerry Brown leaves office Jan. 3, to be succeeded by Republican Gov. George Deukmejian. Deukmejian could, and almost surely would, veto any reapportionment bill objected to by legislative Republicans.

One of the unfortunate results of the 1981 reapportionment is that 600,000 residents of northern Santa Clara and southern San Mateo counties will be without an elected state senator until 1985. They live in a "new" Senate district that has no incumbent and in which no election is scheduled until 1984.

The 1982 Legislature cannot undo this particular bit of damage, but full public hearings now — not window-dressing — could ensure that a bad situation won't be made worse.

[San Francisco Chronicle, Dec. 30, 1982]

3 New Plans Go to Brown

State Demos Finish Redistricting

By Steve Wiegand

Chronicle Correspondent

Sacramento

Democratic state legislators, battling Republicans and each other, pushed through a new reapportionment plan for the state's 45-seat congressional delegation last night.

The Senate voted 21 to 10, the exact number needed, to approve the proposal that redraws congressional district boundaries. No Republicans voted for it, and one Democrat—Senate Democratic Majority Leader John Garamendi of Walnut Grove—voted against it.

The Assembly, which had already given initial approval to the plan, concurred in Senate amendments and sent the measure to Governor Brown on a strictly partisan, 42-to-17 vote.

Republicans promptly repeated their threat to try and block the plan in court or through the election process with a referendum or initiative.

The votes and threats capped a day of bizarre parliamentary manuevers in which Democratic senators, assemblymen and respresentatives engaged in a swap-meet spree of shuffling cities and counties from district to district in an effort to get enough votes to put a plan on Governor Brown's desk before he leaves office on Monday.

Reapportionment plans for the Assembly and Senate were sent to Brown early yesterday.

But the congressional plan was stalled in the Senate by Republicans who said it was "odious" and by several Dem-

ocrats who either didn't like the way the lines were drawn or objected to the fact that no public hearings were ever held on the plan. A half-dozen Democratic members of Congress, meanwhile, stalked legislators in the Capitol halls to lobby for changes in their districts.

Private negotiations between legislators and congressmen made such drastic changes in the plan—engineered by Representative Phil Burton, D-San Francisco, Representative Howard Berman, D-Los Angeles, and several others—that Democratic Senate leaders admitted they weren't quite sure what they were urging other members to vote for.

"No one on this floor knows what's in this Bill," complained Senator Milton Marks, R-San Francisco. "A covey of congressmen have been hanging over us in the past two or three days trying to tell us what to do."

Senator Dan Boatwright, D-Concord, the chairman of the Elections and Reapportionment Committee, said the legal language in the bill bore only faint resemblance to the maps senators were shown. Boatwright, who did not vote on the plan, also pointed out that no testimony was ever taken.

Garamendi voted against the plan when his colleagues rejected his proposal to reunite cities and counties in his district that were divided among three congressional districts.

Democrats have majorities in both the Assembly and Senate and reapportionment plans require only a majority vote to be approved. But Democrats were in a hurry to get the plans to Governor Brown because his replacement, Republican George Deukmejian, is likely to veto any Democratic redistricting plan.

In order to avoid legislative rules that require new bills to be in existence at least three days before being considered, Democrats recalled a bill from Brown's desk that

created new districts for the state Board of Equalization and had already been approved by the Assembly and Senate. The congressional plan was amended into the Board of Equalization bill, which has been around for more than a week.

Democratic reapportionment proposals for the congressional delegation, the Senate and the Assembly pushed through the Legislature last year were all rejected by voters last June, forcing legislators to do it over again.

But unlike last year's bitter and protracted battle over legislative redistricting plans Republican and Democratic legislative leaders mutually agreed to protect most incumbents by giving them safe seats.

The most glaring exception was 71-year-old Republican Senator Ray Johnson, whose Chico home was dumped into a neighboring district represented by GOP Senator James Nielsen of Woodland, by mutual consent of both parties' leaders.

Johnson, whose homespun homilies and folksy manner have endeared him to Democrat and Republican alike, said yesterday he has been invited by Democrats "in high places" to switch his registration.

[Sacramento Union, Dec. 9, 1982]

Reapportionment tango

It should be clear by now that despite all the tub-thumping about the state's financial crisis, the real reason why the Legislature is in session this month—a special session no less—is the redrawing of congressional and legislative district boundaries for the 1984 elections.

That chore is required to be done, albeit not necessarily this month, because the previous plans enacted by Democrats over Republican objections were later rejected by voters.

The reason the Democratic leaders of the Legislature want to do it now is they want to act while their fellow Democrat, Jerry Brown, is still governor. They are certain he'll sign whatever reapportionment bills they devise. But once Republican George Deukmejian is installed as governor, he would compel the Democrats to be more solicitous of the Republicans' desires in rearranging districts by threatening a veto.

In the minds of most of those who occupy the Capitol, taking care of reapportionment is far more important than dealing with the prospect that the state will be broke and unable to pay its bills within six months. That may not be as it should be but that is the way it is.

It would appear that the Republicans' fears of what the Democrats have in mind are well-founded. The preliminary plans drawn up by Democratic staffers in both houses enhance the electoral prospects of the Democrats and make it more difficult for Republicans to win legislative seats in 1984.

In the Assembly, for example, that is accomplished by merging adjacent Republican districts to force GOP incumbents to run against each other or move into new territory to keep their seats.

What's most interesting about the Democratic reapportionment plans seeping out of the Capitol is that the majority party is staying its course of using reapportionment as a tool of political warfare even though voters indicated in June, by rejecting the earlier plans, that they aren't happy with that policy.

One should, incidentally, not paint the Democrats as the sole villains of the situation. Although Republicans are the partisan victims in this particular case, one suspects they would do violence to Democrats if they were in the majority.

What's working here is a fundamental disagreement between the 20 million-plus Californians and their political leaders, regardless of partisan stripe.

The broader public, if it thinks of reapportionment at all, sees the process as one of equalizing the population of districts in a manner that retains certain communities of interest and avoids the butchery of city and county lines—regardless of its impact on the political futures of individual politicians. Most Californians, it would be safe to say, don't consider the first duty of elected officials to be self-preservation.

But politicians view the process in a completely different manner. Their own individual futures and those of their respective parties loom uppermost in their minds. They are far more important considerations than the effect of reapportionment on local communities.

That difference of basic attitude was demonstrated recently in an interview that Assembly Speaker Willie Brown gave the San Diego Union.

He said the earlier plans were rejected because they were perceived by the press as being "skewed toward incumbents." "So I can only conclude," Brown said, "that the only factor not on the table when you comply with the law is self-sacrifice of a maximum number of incum-

bents. Then they (the press) will be impressed you've done the job objectively, you've not gerrymandered it, you've not looked out for your best interests."

Brown, I rather think, misconstrues the attitude of the press toward reapportionment, which is fairly reflective of the larger public's attitude on this issue.

It's not that non-political critics want to see a maximum number of incumbents sacrificed. It is that the fate of incumbents should be secondary to creation of legislative districts which fairly represent the demographic and political makeup of the state and the communities of interest and which are not tailor-made to the political specifications of individual politicians.

Those districts, after all, are supposed to belong to the citizenry, not those who are elected to public office.

Dan Walters is chief of The Union's Capitol bureau.

[Sacramento Bee, Dec. 28, 1982]

New Demo Plan For Congressional Districts May Spur Battle

Republicans Plan Action If Lawmakers Approve Remapping

By Jim Dufur
Bee Capitol Bureau

Democrats in the state Legislature Monday unveiled a plan to redraw the boundaries of the state's 45 congressional districts.

If it is adopted by the majority Democrats in the two houses, a Republican spokesman said, the GOP will go to the ballot box to try to get the plan repealed.

Tony Quinn, policy director for the Assembly Republican caucus, said the Democrats—who increased their majority in the California congressional delegation from one to 11 through their 1981 redistricting plan—are trying in the current plan to gain another seat.

He said the plan would make it difficult for a Republican to win the seat held by GOP Rep. Robert J. Lagomarsino of Ventura. However, Quinn said, Lagomarsino himself should be able to win re-election in the new district.

"There will be a referendum (on the plan)," Quinn predicted.

But Tom Dey, a spokesman for GOP Assembly leader Robert Naylor of Menlo Park, said the GOP could either fight the plan on the ballot or in the courts. The decision, he said, will be made by congressional Republicans.

In 1981, Republicans forced a ballot referendum on the Democratic plans for reapportioning the Senate. Assembly and congressional districts, and voters repealed the plans

last June. In November, voters turned down a proposal from the Republicans and Common Cause for an independent commission to handle redistricting. That left to the Legislature the task of adopting adopt [sic] new boundaries for the 1984 elections.

The Assembly Elections and Reapportionment Committee placed the redistricting plans for the Assembly and the state Senate into one bill Monday and sent it to the Assembly floor. It is scheduled for consideration today. Both plans now have bipartisan support, although some Republicans still are unhappy over the Senate plan pitting GOP Sens. Ray Johnson of Chico and John Doolittle of Sacramento against each other in the 1984 GOP primary.

Under the Assembly plan, no incumbents would be forced into running against each other.

While legislative approval of the Senate and Assembly plans appears assured, Democrats in the Senate continued to insist that a public hearing be held on the congressional plan before they will vote on it.

Little time remains for a hearing because legislators plan to leave the Capitol Wednesday for the New Year's weekend.

Democrats are eager, however, to get all of the reapportionment plans signed into law by Democratic Gov. Brown before he leaves office Jan. 2, fearing GOP governor-elect George Deukmejian would certainly veto the congressional plan and, possibly, the other plans.

The congressional plan was devised primarily by Democratic Rep. Phillip Burton of San Francisco, who masterminded the 1981 plan that resulted in the Democrats gaining a 28-17 majority this year in the California congressional delegation.

Assemblyman Richard Alatorre, D-Los Angeles, who is carrying both the Assembly-Senate and the congressional

reapportionment bills, maintained that the congressional plan "is not a work product of anyone else, it is a work product of the Assembly."

Action on the congressional bill had been delayed until the committee chairwoman, Maxine Waters of Los Angeles, who is considering a run for Congress in the future, was satisfied with the lines of the district where she would be a candidate.

In the Central Valley, the principal change in the new congressional plan would place all of Stanislaus County in the district represented by Tony Coelho, D-Merced. Currently, part of the county is in the district of representative-elect Ed Zschau, R-San Mateo.

By gaining Stanislaus County, Coelho would lose Madera County to newly elected Rep. Richard Lehman, D-Fresno. Coelho would retain Merced and Mariposa counties and western Fresno County.

Lehman would retain sizable portions of the cities of Stockton and Fresno, plus the counties of Calaveras, Tuolumme and Mono.

GOP Rep. Norman Shumway of Stockton would continue to share the city of Stockton and San Joaquin County with Lehman, while also representing Alpine, Amador, Placer, Nevada, Sierra, Plumas, Lassen and Modoc counties.

The district represented by GOP Rep. Eugene Chappie of Chico would move into portions of Napa and Yolo counties. His district also would include the counties of Yuba, Sutter, Butte, Glenn, Trinity, Tehama, Shasta and Siskiyou counties.

By giving up a portion of Yolo County, Democrat Vic Fazio of West Sacramento would pick up the city of Lincoln and portions of Placer County, while retaining portions of northern and southern Sacramento County, including Folsom, Citrus Heights, North Highlands, Galt, Walnut Grove, Herald and Wilton.

Democratic Rep. Robert Matsui of Sacramento would retain the remainder of Sacramento County.

GOP Rep. Charles Pashayan of Fresno would have a more GOP-oriented district, according to GOP consultant Quinn, because he would pick up Clovis and the Fig Garden area of Fresno, while retaining Kings and Tulare counties and the Delano-McFarland area of Kern County.

[Sacramento Bee, Dec. 30, 1982]

Congressional, Legislative Redistricting Sent To Brown

By Jim Dufur
Bee Capitol Bureau

Under intense pressure from congressional Democrats, the state Legislature Wednesday night passed a bill that redraws the boundaries of the state's 45 congressional districts.

Senate Republican leader William Campbell of Hacienda Heights warned that the plan faces a possible court or ballot challenge.

The vote in the Senate was 21-10, with Senate Democratic floor leader John Garamendi of Walnut Grove joining nine Republicans in voting against it. In the Assembly the vote was 42-17, with Republicans providing the "no" votes and Democrats providing all the "yes" votes.

The bill was send [sic] to Gov. Brown late Wednesday for his signature, and lawmakers promptly recessed until Monday, when Republican George Deukmejian will be sitting in the chief executive's office.

The action ended 48 hours of feverish activity by congressional Democrats, who could see their safe districts being shattered by a potential Deukmejian veto.

Campbell said the GOP opposes the bill because it "locks in" the current 28-17 Democratic majority in the California congressional delegation.

Campbell noted the margin grew from one to 11 as a result of the reapportionment bill pushed through by Democrats in 1981.

In the Assembly, Democrats Jim Costa of Fresno and Sam Farr of Carmel diclined to vote. Costa reportedly

sought to have the bill amended to include a district in which he could, in future years, run and win. Costa said, however, he simply didn't like some of the lines of the districts.

"I don't know what I'm going to do tomorrow," he said, and couldn't comment on what might happen "down the road."

Farr and Sen. Henry Mello, D-Watsonville, who tied up the Senate for two hours seeking changes in the lines in Santa Cruz County, were unhappy with the boundary lines in their area.

Garamendi opposed the bill because of what he called the "bent dumbbell" district that runs from Stockton, into the Sierra and down to Fresno. It currently is represented by former Assemblyman Richard Lehman, D-Fresno, who joined what a senator called a "covey of (Democratic) congressmen" who have lobbied legislators the past two days for their redistricting plan.

The congressional redistricting bill, which also includes new lines for the state's four Board of Equalization districts, is the second reapportionment bill considered by the Senate this week. In the early morning hours Wednesday, a bill containing the Senate and Assembly redistricting plans was sent to the governor's desk on a vote of 30-7, over the vociferous protests of Sen. Ray Johnson, R-Chico.

Johnson complained he had been "knifed" and "shafted" by anonymous Democrats and Republicans, and possibly "serviced" by fellow Republican John Doolittle of Sacramento, his possible opponent in the 1984 Republican primary.

Later Wednesday, Johnson said that although he has "no intention at this time" of resigning from the Senate or switching his registration to the Democratic Party because of the reapportionment bill, he is considering those options in an effort to avoid a costly and disruptive 1984

GOP primary. He will make a decision, he said, next fall—"when the snow flies in the Siskiyous."

In the bill, Johnson's 1st District was changed so that it does not include his home but does include Doolittle's. A third-generation Butte County resident, Johnson said he probably will rent an apartment in northeast Sacramento County, where Doolittle resides, in order to remain in his district and seek re-election.

Doolittle, who was reapportioned out of his district by the Democrats in 1981, already has announced he will run in the 1st District in 1984.

Doolittle has predicted Johnson will not seek re-election but will instead receive an appointment in the Reagan or Deukmejian administrations. If Johnson does not run, GOP Assemblyman Stan Statham of Redding said he will consider challenging Doolitte. Statham said he will not, however, challenge Johnson.

While gaining portions of Sacramento and Yolo counties, the 1st District lost Butte County. It still includes El Dorado, Placer, Nevada, Sierra, Sutter, Yuba, Lassen, Plumas, Modoc, Siskiyou and Trinity counties.

The bill with the Senate and Assembly plans contains an "urgency clause," which not only will cause it to go into effect as soon as it is signed by Gov. Brown but also will keep it off the ballot. The state constitution does not allow a ballot referendum on a bill containing an urgency clause.

In 1981, Republicans forced referendums on the Democratic plans for Senate, Assembly and congressional reapportionment and voters in June repealed all three plans. Last month, voters turned down a proposal for an independent commission to handle reapportionment, forcing the Legislature to produce new redistricting plans.

EXHIBIT C

EXHIBIT C

Office of the Secretary of State
March Fong Eu
Elections Division
(916) 445-0620

1230 J Street
Sacramento, California 95314

March 17, 1983

TO: ALL REGISTRARS OF VOTERS/COUNTY CLERKS

SUBJECT: REAPPORTIONMENT

Enclosed for your information and use are technical corrections for assembly and congressional districts described in Assembly Bill 2 and Senate Bill 3 and chaptered as 6 and 8, 1983 Statutes respectively.

Copies of maps describing assembly and congressional districts are now being prepared and will be forwarded to you within two weeks.

If you have any comments or questions regarding maps or corrections, please feel free to contact me.

Sincerely

/s/ DAVID B. PITMAN
DAVID B. PITMAN
Assistant Chief of
Elections

OBP/dj

Enclosures

SECRETARY OF STATE
TECHNICAL CORRECTION TO
AB2-CHAPTER 6

1. CD 1—Napa County - page 3
   CT 2013—*Corrected description*: All except BG 2 and bks 101, 102, 103, 105, 106, 109, 110 and 113.

2. CD 3—page 6
   CT 59.01—*Delete* bks 115, 122
   CT 82.05—*Delete* from list of whole tracts; add to partial tracts description: Portions not in the City of Folsom

3. CD 6—Sonoma County - page 8
   Add: CT 1535—BGs 1, 3 and ED 0063

4. CD 7—page 11
   Add: CT 3440—Portions in the City of Walnut Creek

5. CD 12—page 20
   Add: CT 1211
   Add: CT 1208—Portions in the City of Scotts Valley
   Add: CT 1224—All except bks 206, 207, 208, 209, 210, 211, 212, 214 and 219

6. CD 13—page 22
   CT 5046.02—*Corrected description:* Portions in the City of Santa Clara
   CT 5070—*Add to description:* the entrapped unincorporated portions of bks 207, 904

7. CD 15—Fresno County - page 23
   CT 19—*Add to description:* except blk 299

8. CD 18—page 26
   CT 12—*Delete* bks 418, 419, 422, 427, 430

9. CD 19—page 28
   CT 47.02—*Add to "all except" description:* unincorporated parts of bks 205, 301, 302, 303

10. CD 20—page 28

Add: CT 9007.01
CT 9201—*delete* bks 112, 113, 114, 115, 116, 122, 202
CT 9203.21—*delete*

11. CD 21—pages 29 and 30
CT 1064—*delete* bk 311; *add* bk 433
CT 1111.02—*change* BG 7 to BG 1
CT 1344.02—*Corrected description:* All except bks 210, 211, 212, 219, 225, 226 and BG 3 except bk 318
CT 9007.01—*delete*
Add: CT 9203.21

12. CD 23—page 36
Add: CT 2674.01—bks 101, 202, 204

13. CD 27—pages 45, 47, 48
CT 2674.01—*delete* from list of whole tracts; *add* to partial tracts description: Portions not in CD 23
CT 2913—*delete* from list of partial tracts; *add* to whole tracts
Add: CT 2931—BGs 1, 2, 9 and bk 411
CT 6023.01—*delete*
CT 6037.02—*delete* from list of whole tracts; *add* to partial tracts description: Portions not in the City of Hawthorne

14. CD 30—page 55
CT 4340—*add* bks 503, 517
CT 5313—*Corrected description:* BG 7 excluding bk 703

15. CD 31—pages 56, 58
CT 2913—*delete* from partial tracts
CT 2931—*delete* from list of whole tracts; *add* to partial tracts description: Portions not in CD 27
CT 5705—*Corrected description:* bks 504, 505, 713, 714, 716
CT 6023.01—*delete* from partial tracts; *add* to whole tracts
Add: CT 6037.02—Portions not in CD 27

16. CD 32—page 60
CT 5514—*delete* bks 202, 203, 204, 205

17. CD 34—page 65
CT 4057—*insert* after "Covina" - incorporated as of June 1, 1982
CT 4084.02—*change* "Pomona Fwy *and* west of" to "Pomona Fwy *or* west of" *add* bk 108

18. CD 36—pages 67-69
CT 410 (Riverside County)—*delete* from list of whole tracts; *add* to partial tracts — *description:* portions not in the City of Norco
CT 74.02 (San Bernardino County)—*add* to "all except" description — excluding bks 223, 235, 238
CT 76 (San Bernardino County)—*delete* from list of whole tracts; *add* to partial tracts — *description:* portions not in the City of Redlands

19. 42—pages 79, 80
CT 5771 (Los Angeles County)—*Corrected description* - all except BGs 1, 4, 5, and bks 201, 206
CT 992.04 (Orange County)—*delete* from list of whole tracts; *add* to partial tracts — *description:* portions not in the City of Fountain Valley
CT 992.35 (Orange County)—*delete* from "all except" description — bks 120, 121

20. CD 43—pages 82, 83
CT 207.03 (San Diego County)—*add* to "all except" description: uninc., parts of bks 908, 916, 917, 928, 930
CT 524.09 (Orange County)—*delete* from partial tracts; *add* to whole tracts

21. CD 45—page 85
CT 32.04—*add* to "all except" description — and portions in the City of Chula Vista
CT 207.04—*add* to "all except description — unincorporated bks 210, 236, 237

EXHIBIT D

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CONGRESSIONAL DISTRICT 1

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CALIFORNIA AB2X

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CONGRESSIONAL DISTRICT 2

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CALIFORNIA AB2X

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CONGRESSIONAL DISTRICT 3

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CONGRESSIONAL DISTRICT 4 EXHIBIT D, PAGE 4 OF 45

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CONGRESSIONAL DISTRICT 5

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CONGRESSIONAL DISTRICT 6

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CONGRESSIONAL DISTRICT 7

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CONGRESSIONAL DISTRICT 8

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CONGRESSIONAL DISTRICT 9

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CONGRESSIONAL DISTRICT 10

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CONGRESSIONAL DISTRICT 11

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CONGRESSIONAL DISTRICT 12 EXHIBIT D, PAGE 12 OF 45

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CONGRESSIONAL DISTRICT 13

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CONGRESSIONAL DISTRICT 14 EXHIBIT D, PAGE 14 OF 45

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57 CONGRESSIONAL DISTRICT 15 EXHIBIT D, PAGE 15 OF 45

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CONGRESSIONAL DISTRICT 16

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CONGRESSIONAL DISTRICT 17

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CONGRESSIONAL DISTRICT 18

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CONGRESSIONAL DISTRICT 19

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62 CONGRESSIONAL DISTRICT 20 EXHIBIT D, PAGE 20 OF 45

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CONGRESSIONAL DISTRICT 21

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64 CONGRESSIONAL DISTRICT 22

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65 CONGRESSIONAL DISTRICT 23

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CONGRESSIONAL DISTRICT 24 EXHIBIT D, PAGE 24 OF 45

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CONGRESSIONAL DISTRICT 26 EXHIBIT D, PAGE 26 OF 45

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CONGRESSIONAL DISTRICT 27

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CONGRESSIONAL DISTRICT 28

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CONGRESSIONAL DISTRICT 29 EXHIBIT D, PAGE 29 OF 45

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72 CONGRESSIONAL DISTRICT 30 EXHIBIT D, PAGE 30 OF 45

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73 CONGRESSIONAL DISTRICT

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74 CONGRESSIONAL DISTRICT 32 EXHIBIT D, PAGE 32 OF 45

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75 CONGRESSIONAL DISTRICT 33 EXHIBIT D, PAGE 33 OF 45

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CONGRESSIONAL DISTRICT 34

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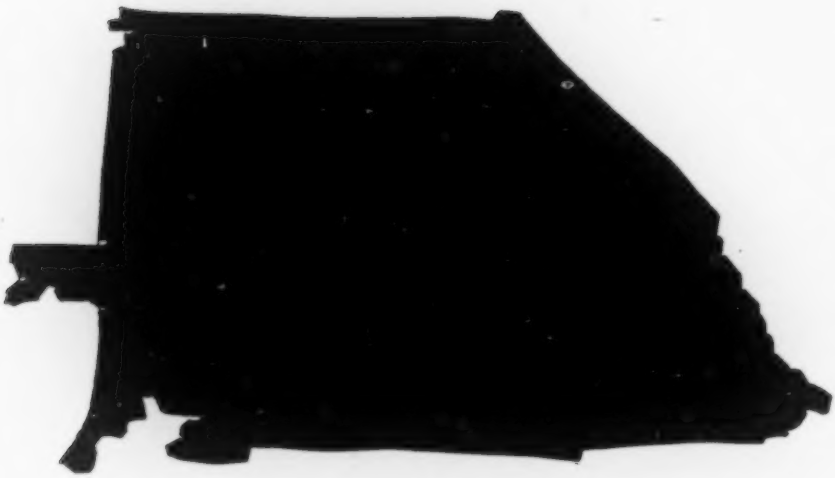
CALIFORNIA AB2X



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77 CONGRESSIONAL DISTRICT 35 EXHIBIT D, PAGE 35 OF 45

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78 CONGRESSIONAL DISTRICT 36 EXHIBIT: D, PAGE 36 OF 45

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CONGRESSIONAL DISTRICT 37

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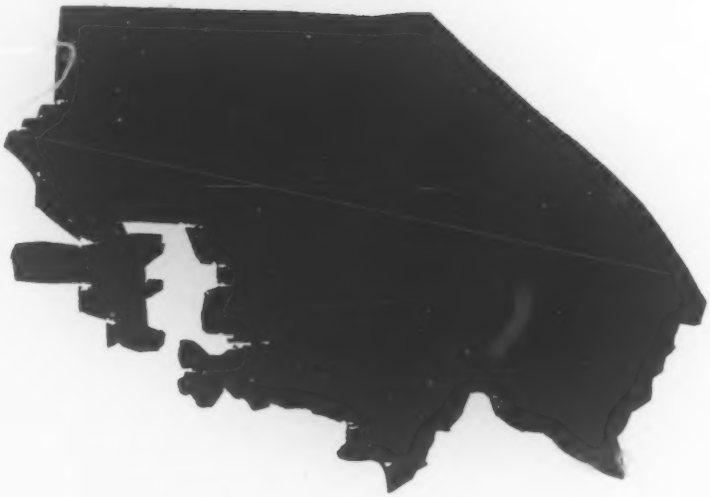
80 CONGRESSIONAL DISTRICT 38 EXHIBIT D, PAGE 38 OF 45

CALIFORNIA AB2X



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CONGRESSIONAL DISTRICT 39 EXHIBIT D, PAGE 39 OF 45

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CONGRESSIONAL DISTRICT 40 EXHIBIT D, PAGE 40 OF 45

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CONGRESSIONAL DISTRICT 41 EXCEPTION D, PAGE 41 OF 95

CALIFORNIA AB2X

84 CONGRESSIONAL DISTRICT 42 EXHIBIT D, PAGE 42 OF 45

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CONGRESSIONAL DISTRICT 43

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CONGRESSIONAL DISTRICT 44 EXHIBIT D, PAGE 44 OF 45

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CONGRESSIONAL DISTRICT 45

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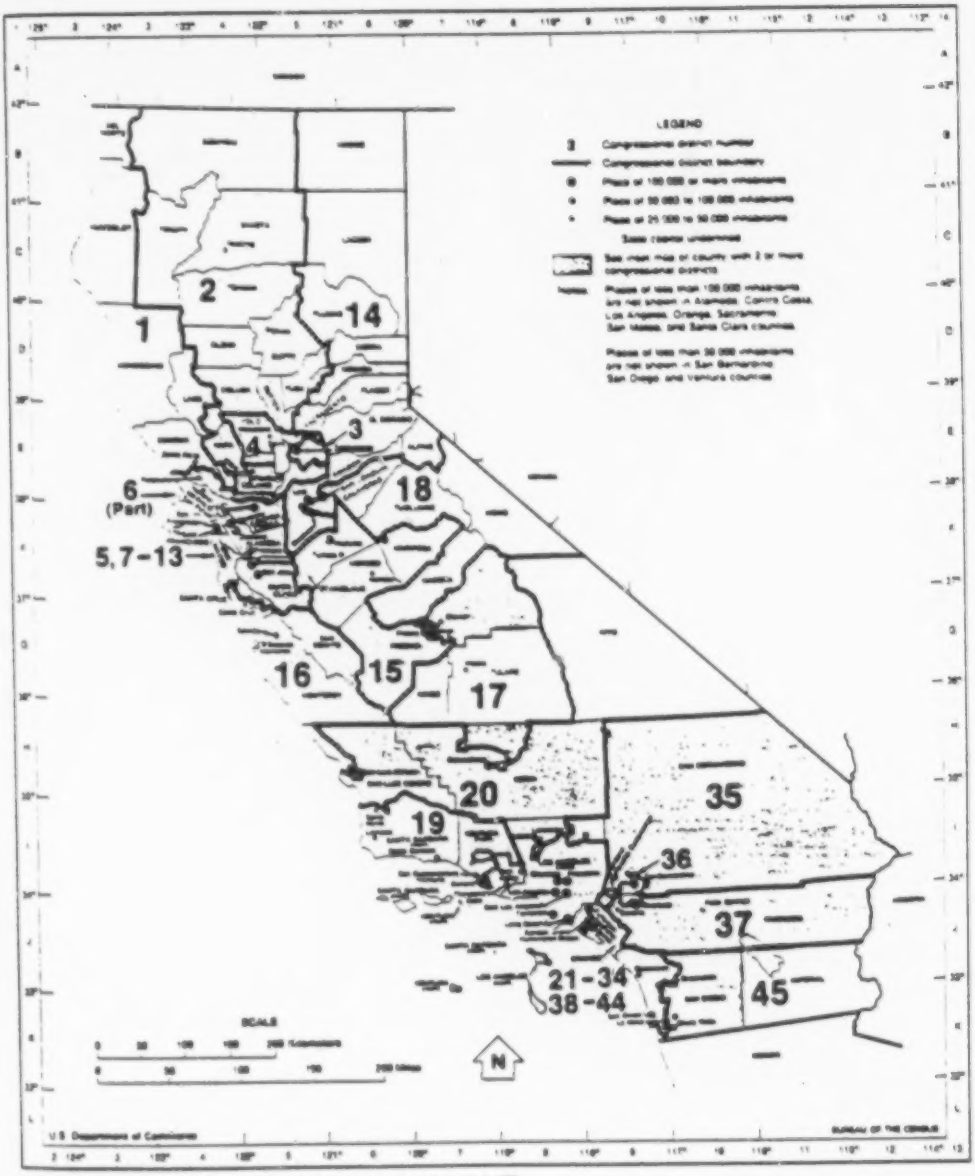
EXHIBIT E

Congressional Districts, Counties, and Selected Places



8–74 CALIFORNIA

CONGRESSIONAL DISTRICTS, TRACTS, COUNTIES

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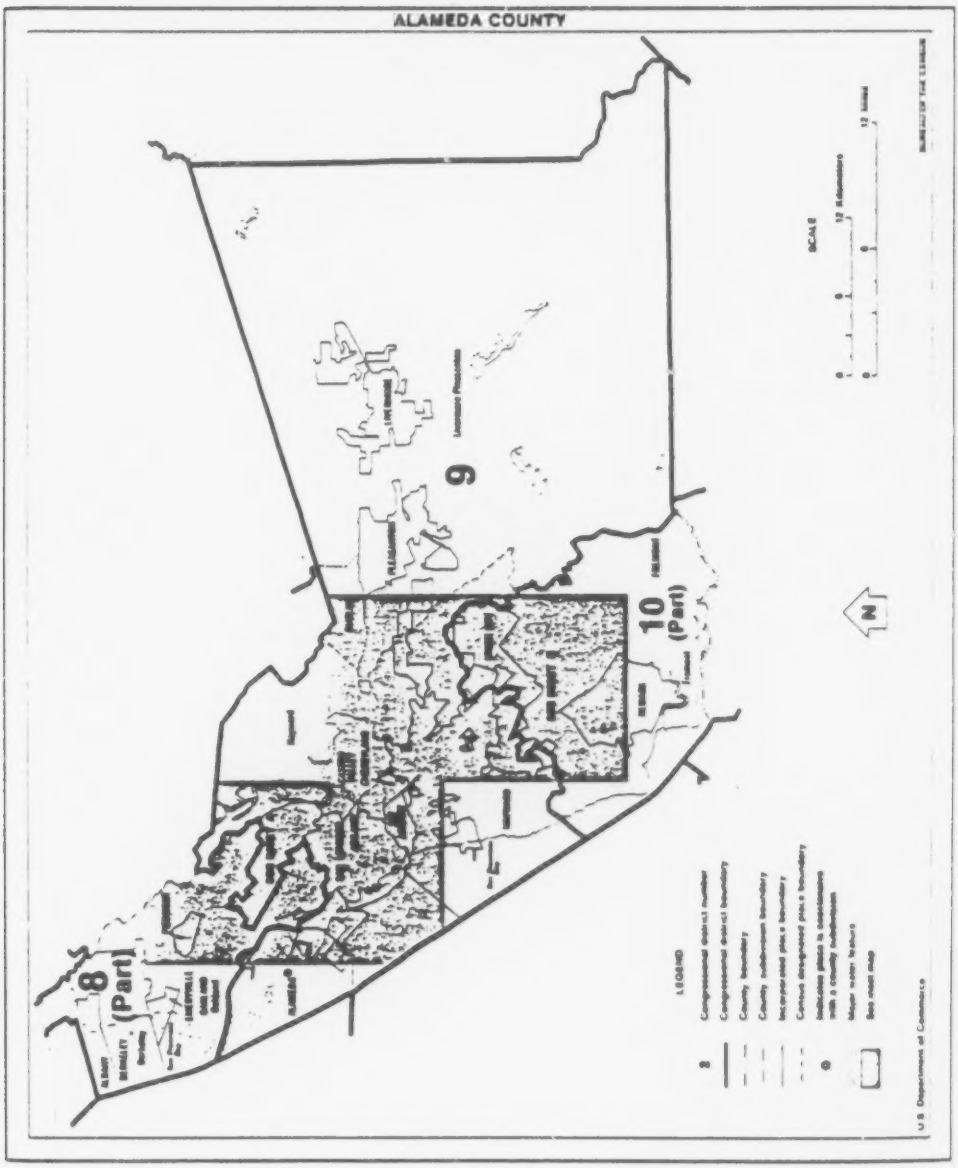
Congressional Districts, Counties, and Selected Places



CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

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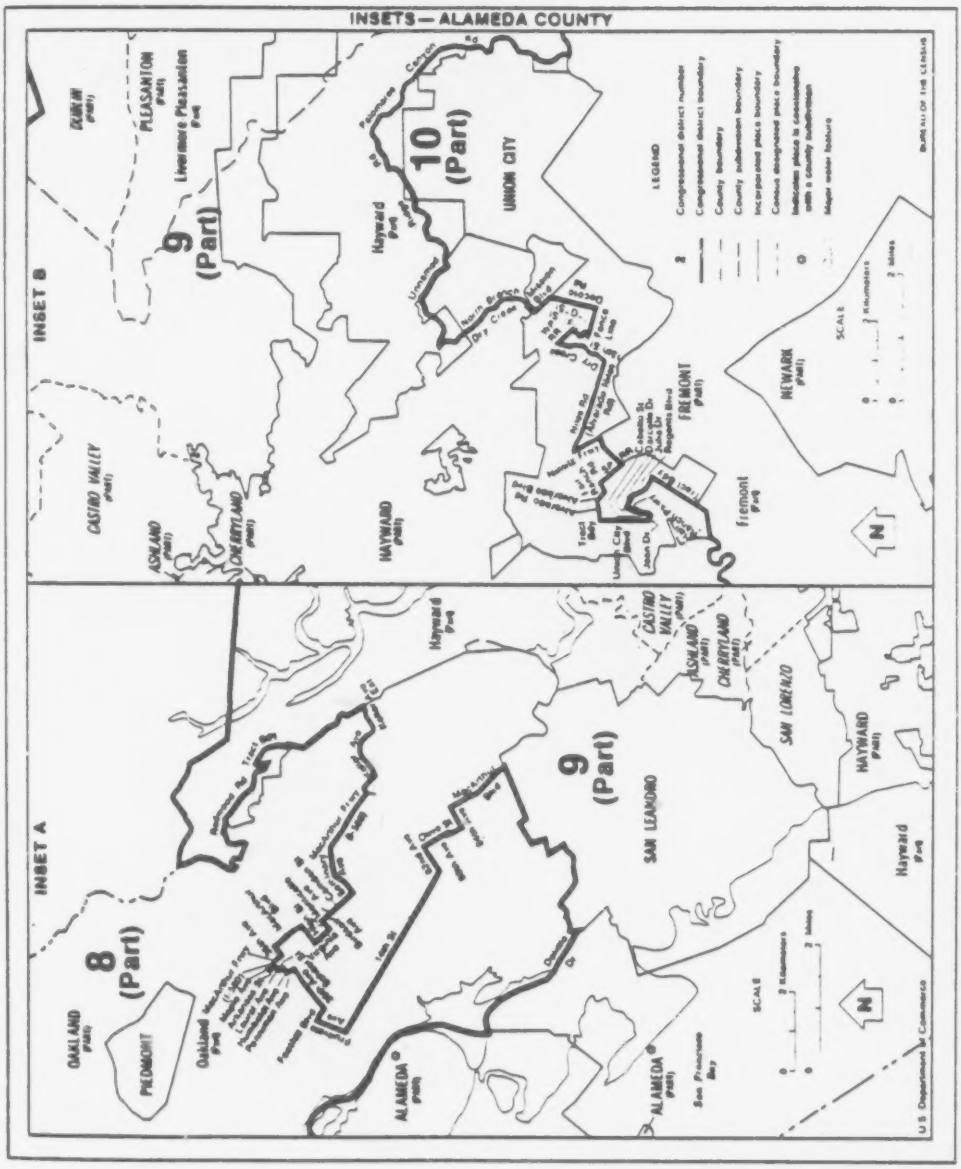
Congressional Districts, Counties, and Selected Places



Congressional districts established January 2 1983 as other boundaries are as of January 1 1980

E-76 CALIFORNIA

CONGRESSIONAL DISTRICTS OF THE 98TH CONGRESS

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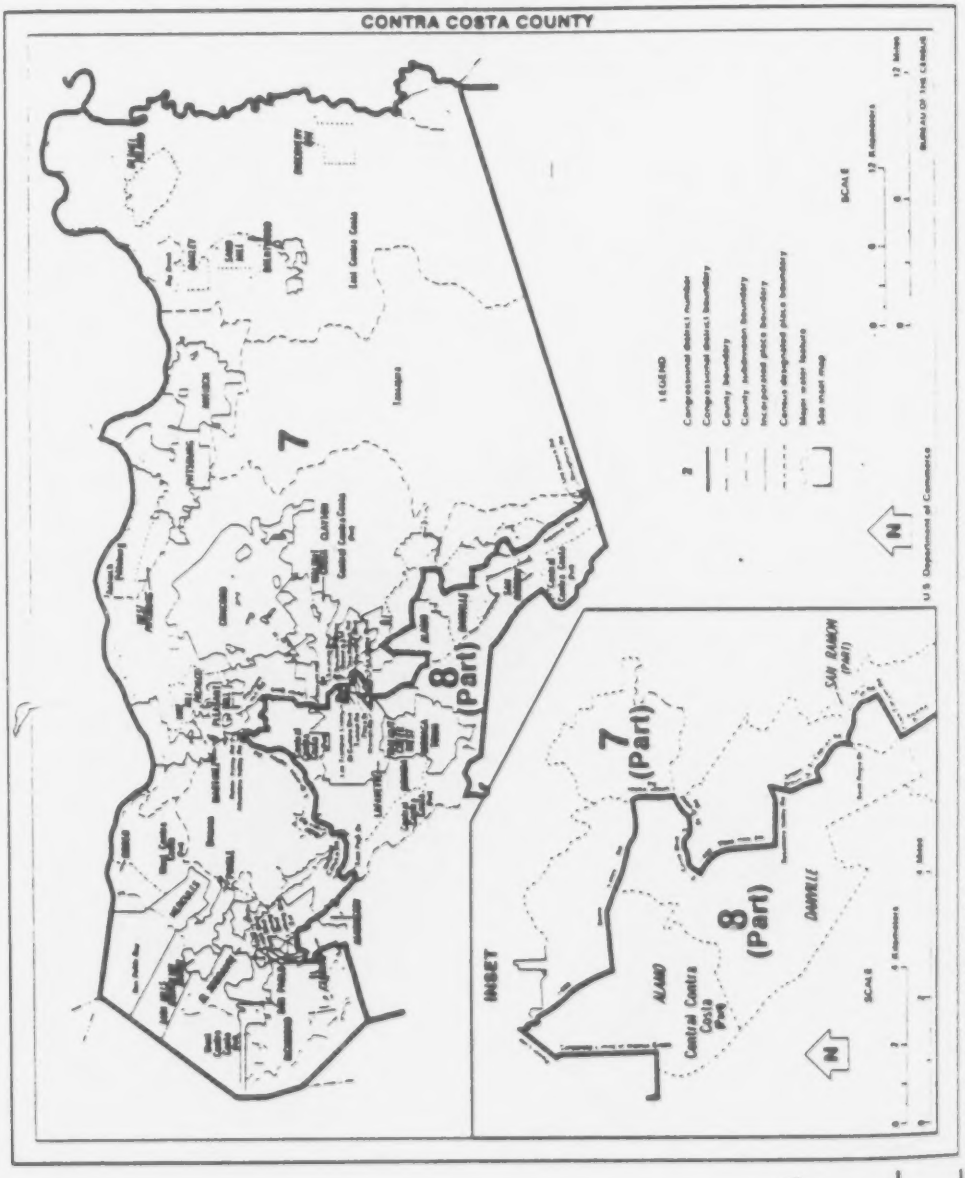
Congressional Districts, Counties, and Selected Places



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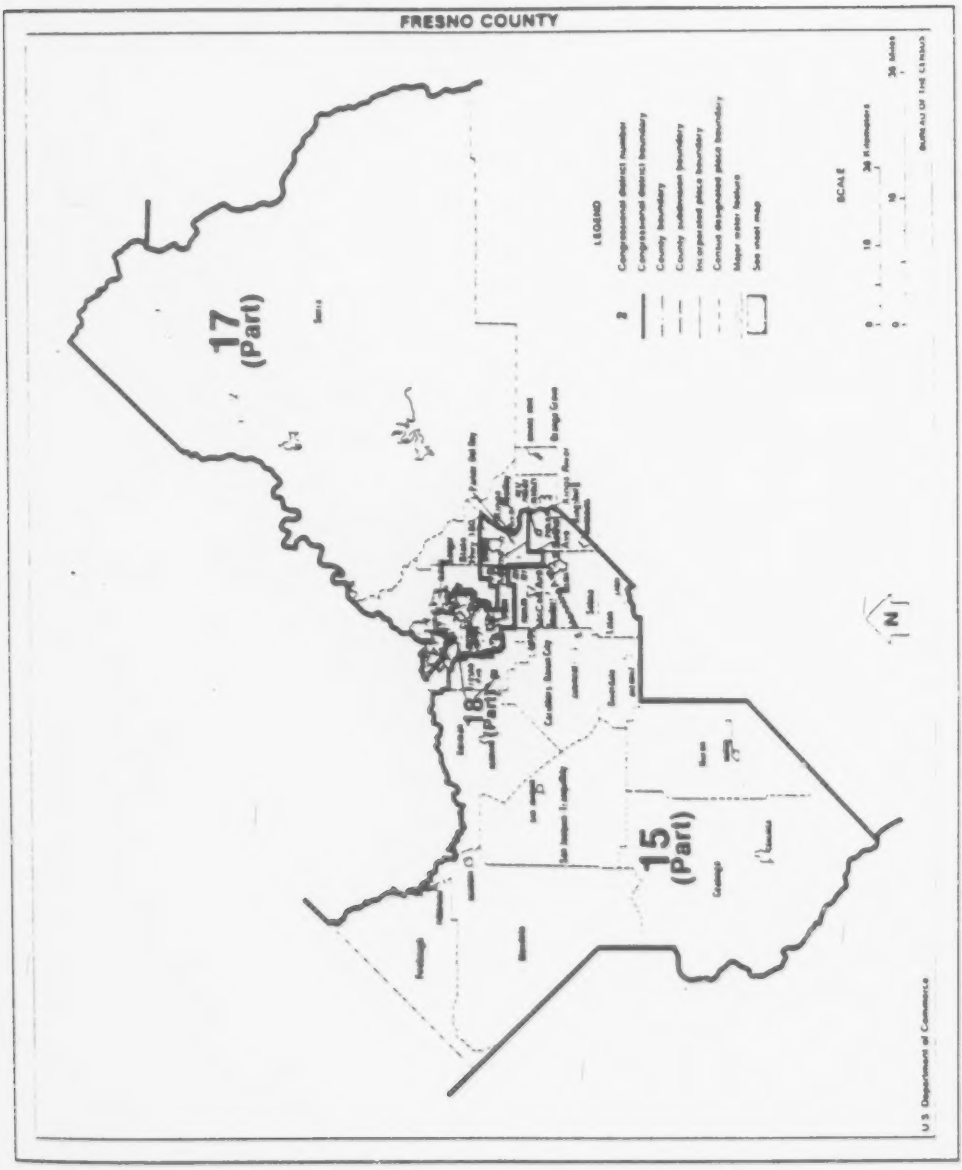
Congressional Disticts, Counties, and Selected Places



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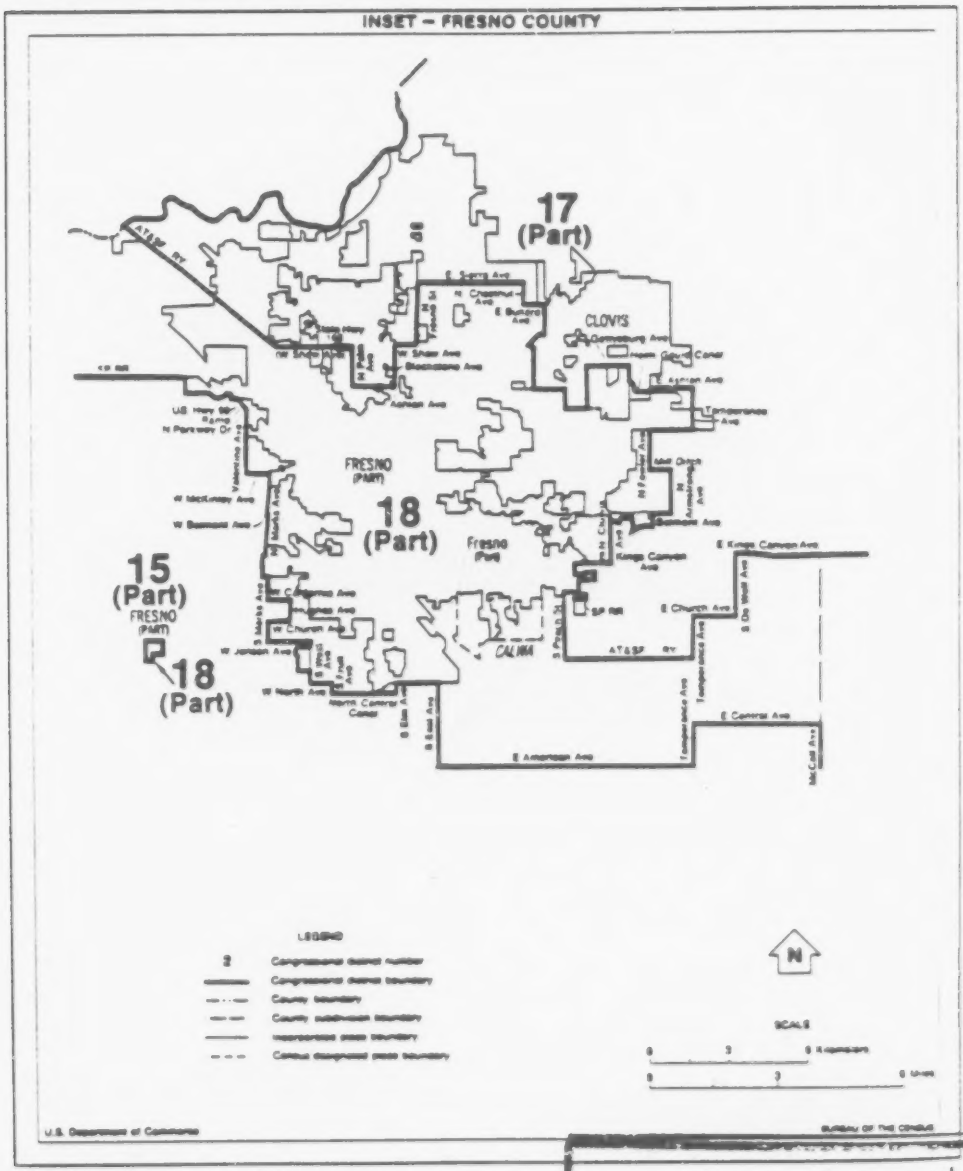
Congressional Districts, Counties, and Selected Places



CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

CALIFORNIA E-79

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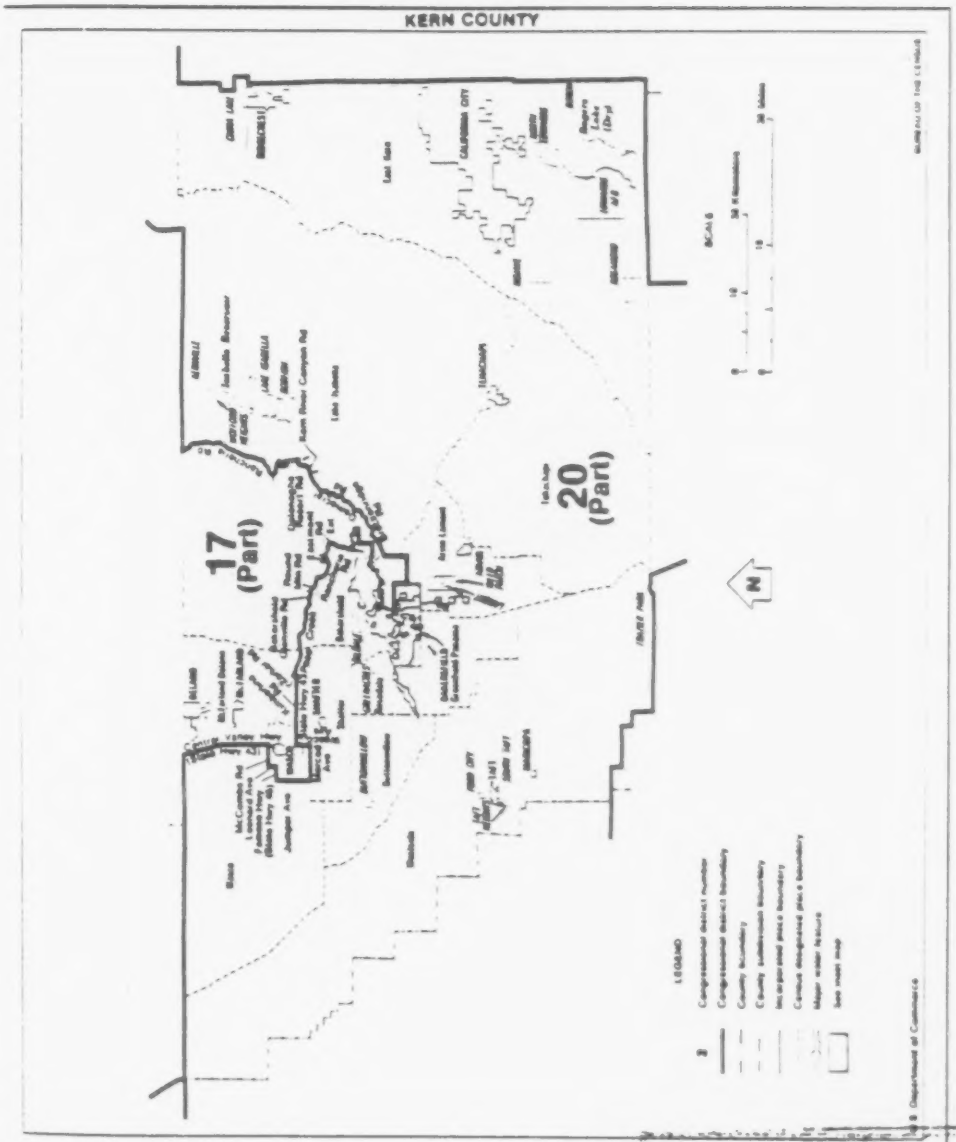
Congressional Disticts, Counties, and Selected Places



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CONGRESSIONAL DISTRICTS OF THE 98TH CONGRESS

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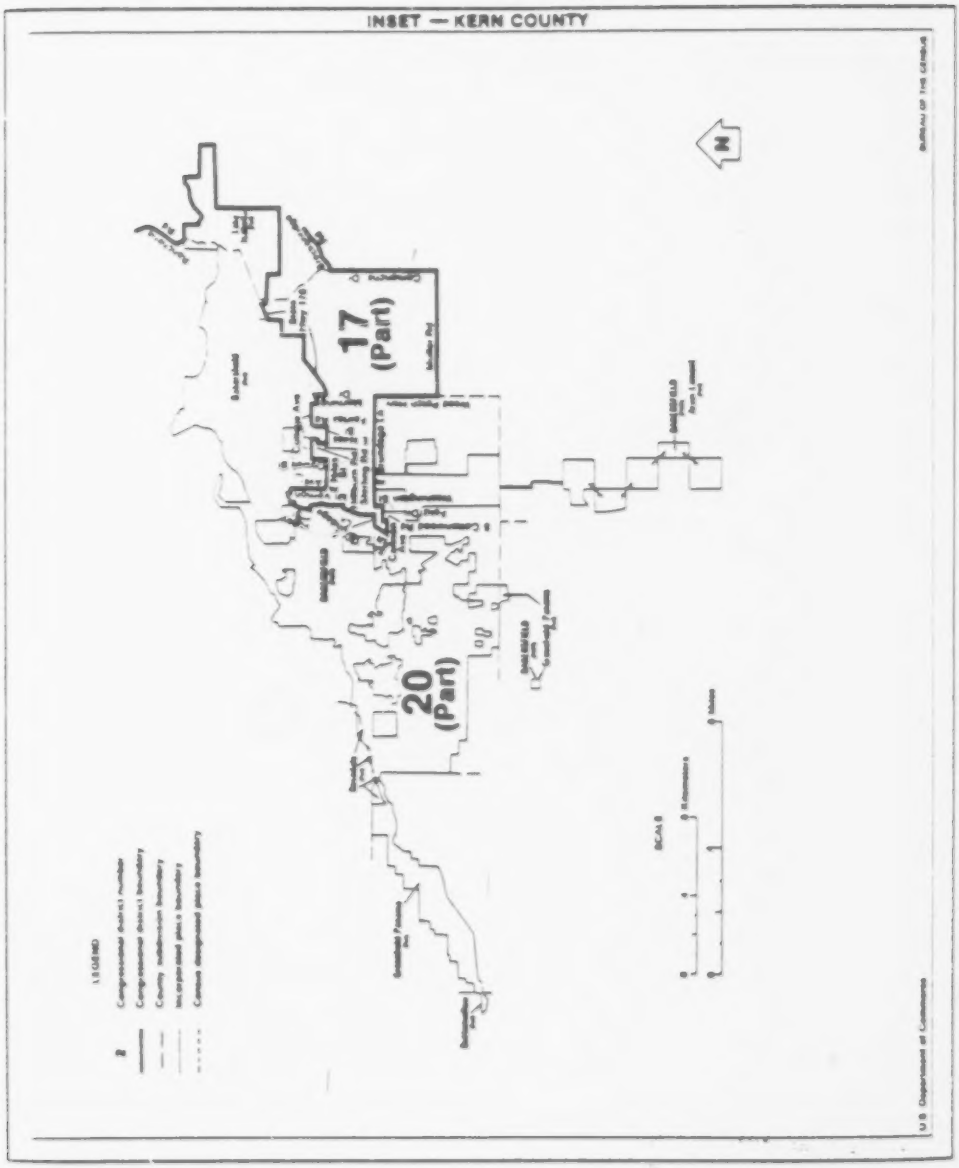
Congressional Disticts, Counties, and Selected Places



CONGRESSIONAL DISTRICTS OF THE 98TH CONGRESS

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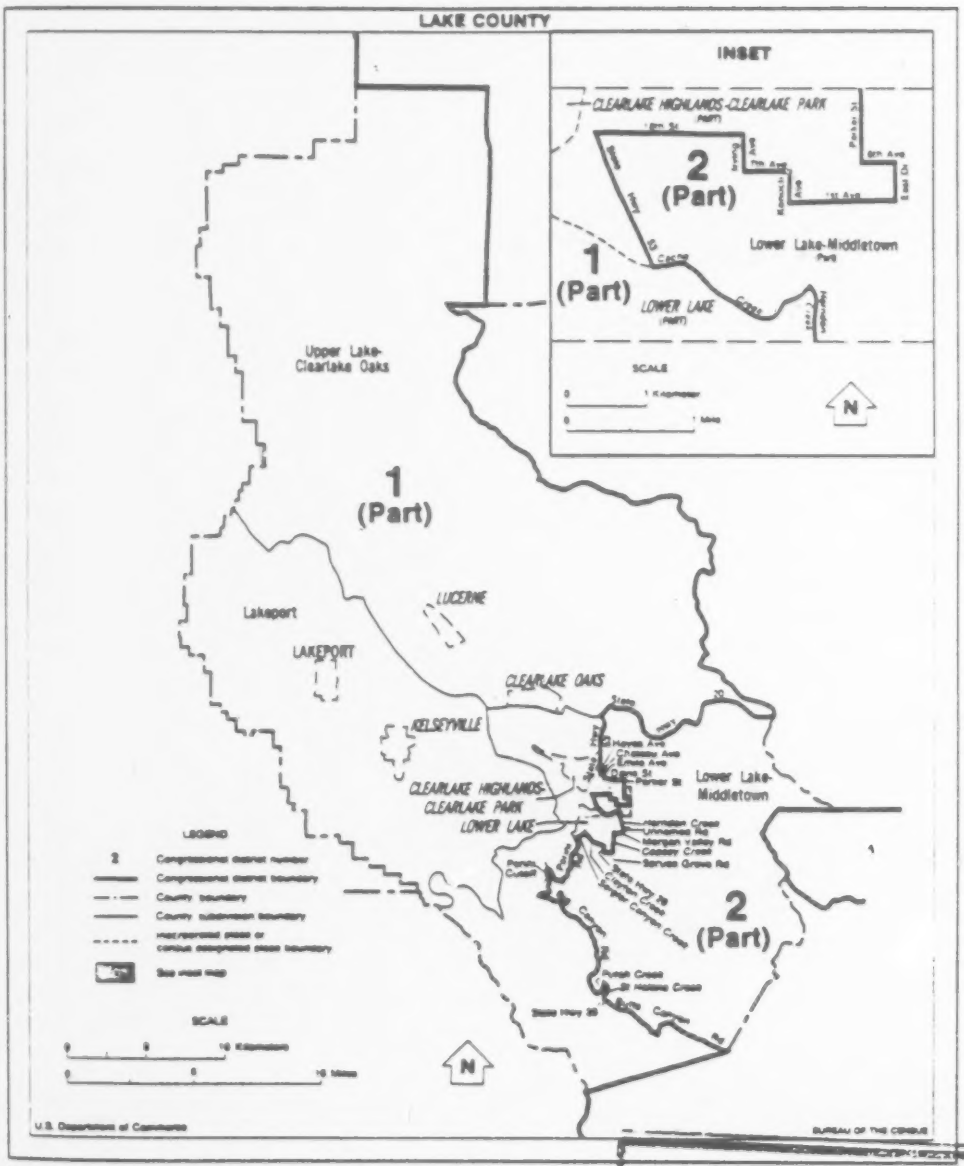
Congressional Districts, Counties, and Selected Places



Congressional districts established January 3, 1983; all other boundaries are as of January 1, 1983.

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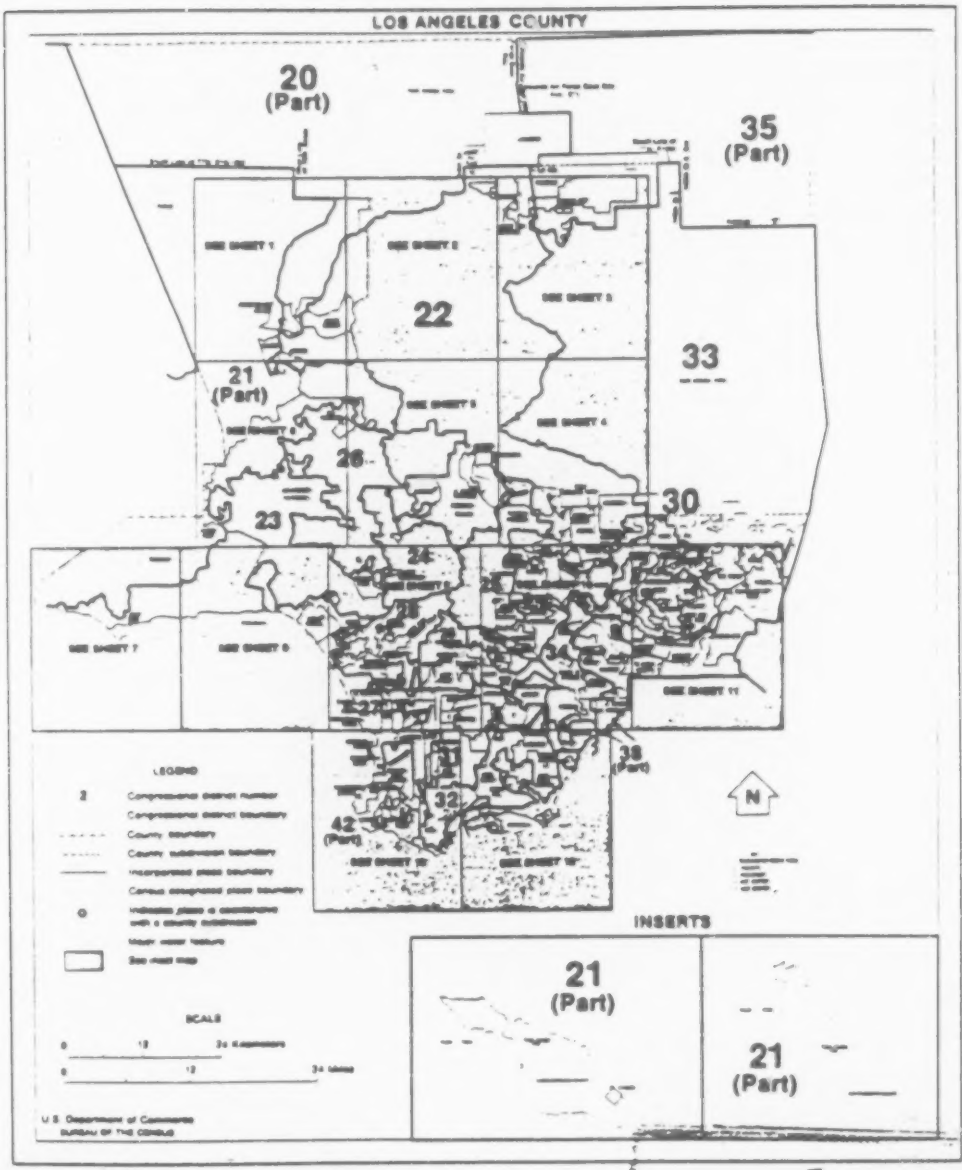
Congressional Districts, Counties, and Selected Places



CONGRESSIONAL DISTRICTS OF THE 98TH CONGRESS

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CALIFORNIA 6-83

Congressional Districts, Counties, and Selected Places

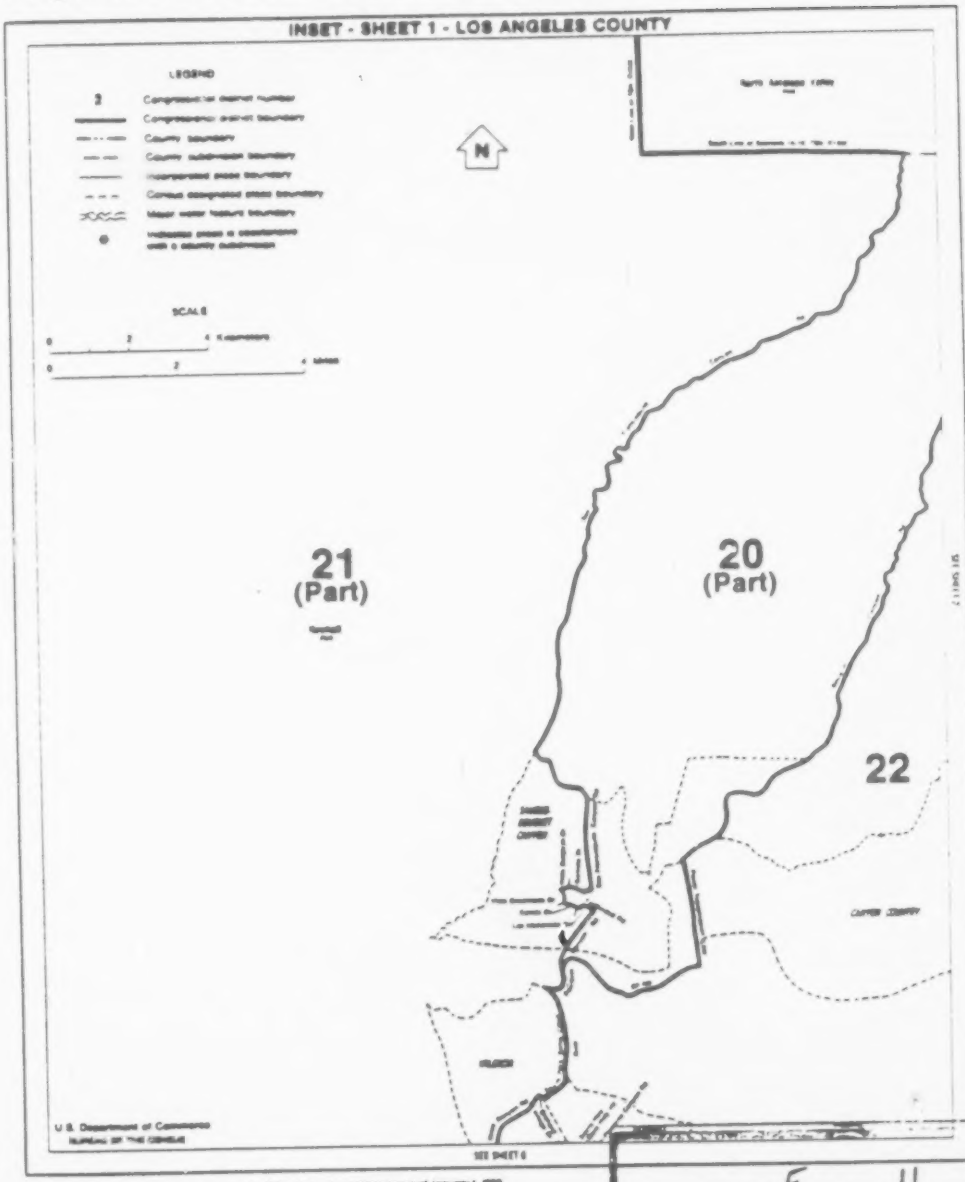

EXHIBIT E, PAGE 11 OF 44

CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

6-84 CALIFORNIA

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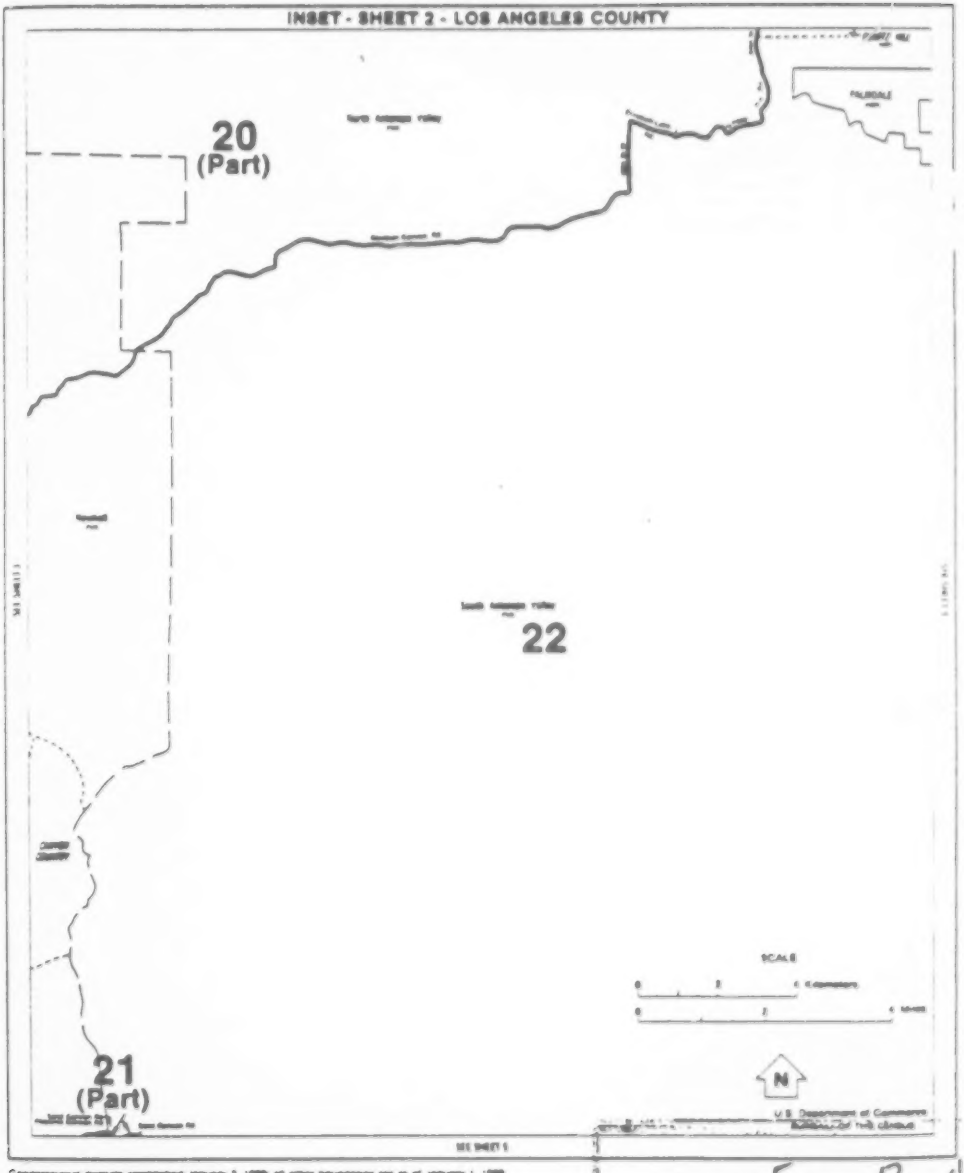
Congressional Districts, Counties, and Selected Places



CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

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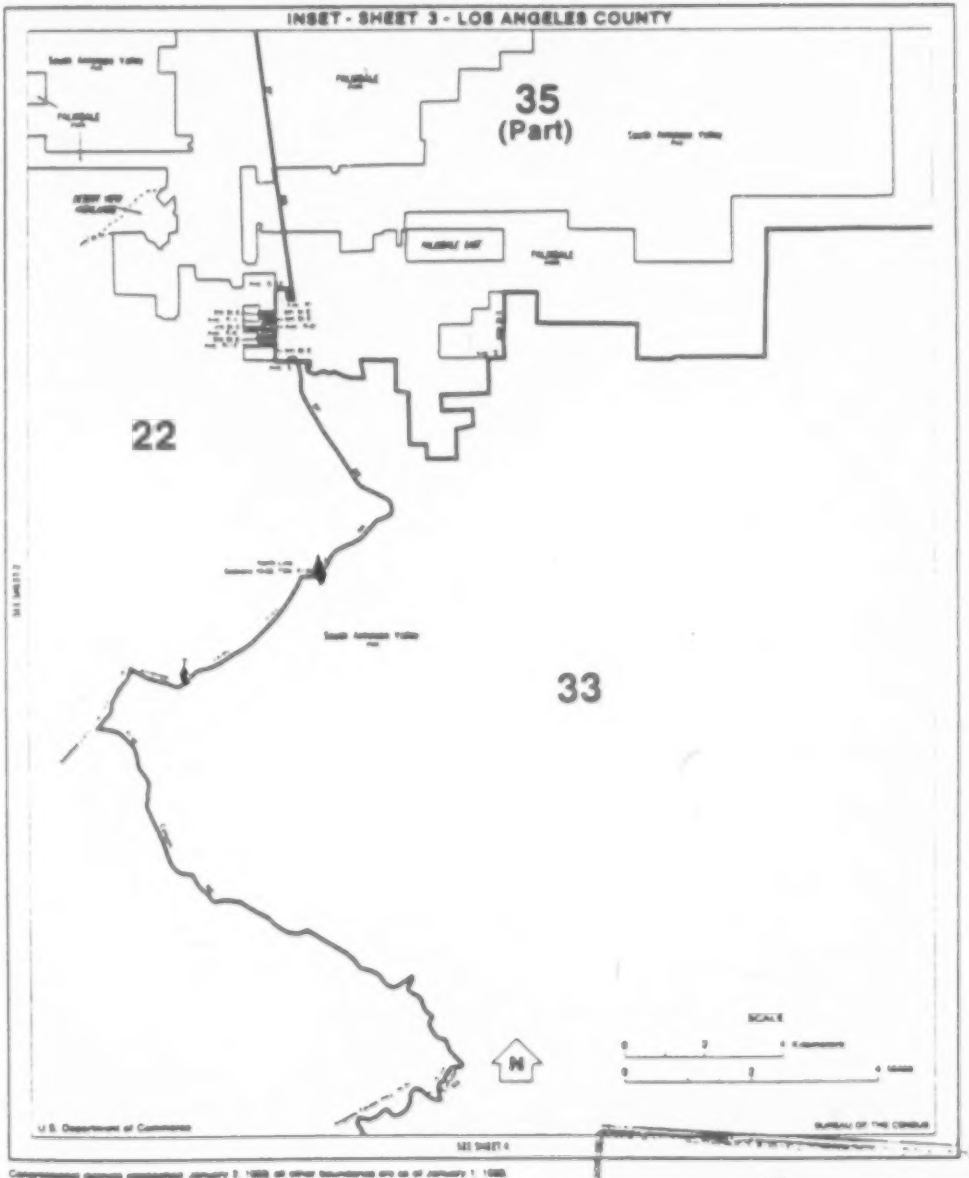
CALIFORNIA 6-85

Congressional Districts, Counties, and Selected Places



Congressional districts established January 3, 1983, or other boundaries are as of January 1, 1983.

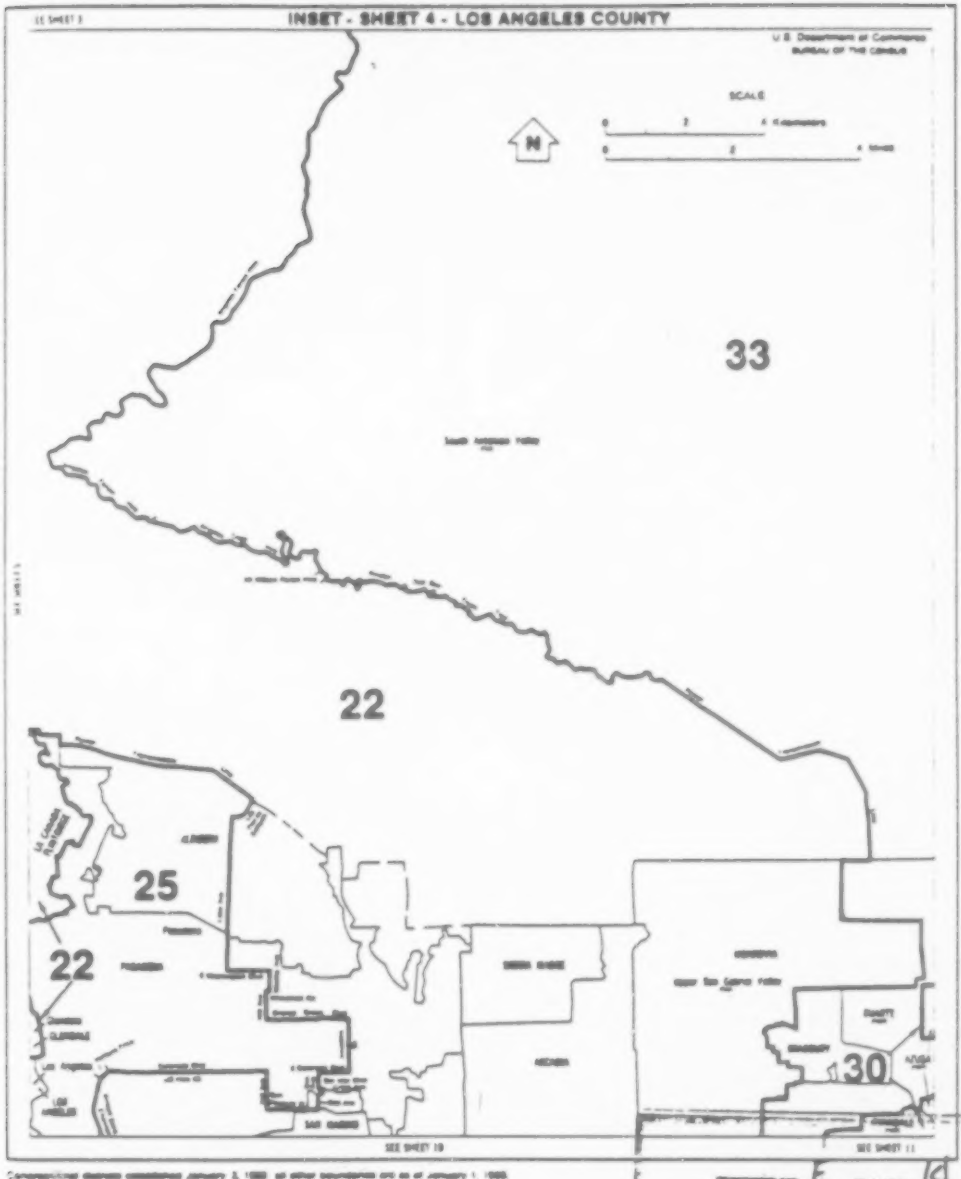
5—06 CALIFORNIA

CONGRESSIONAL DISTRICTS OF THE 98TH CONGRESS

EXHIBIT E PAGE 13 OF 94

100

Congressional Districts, Counties, and Selected Places



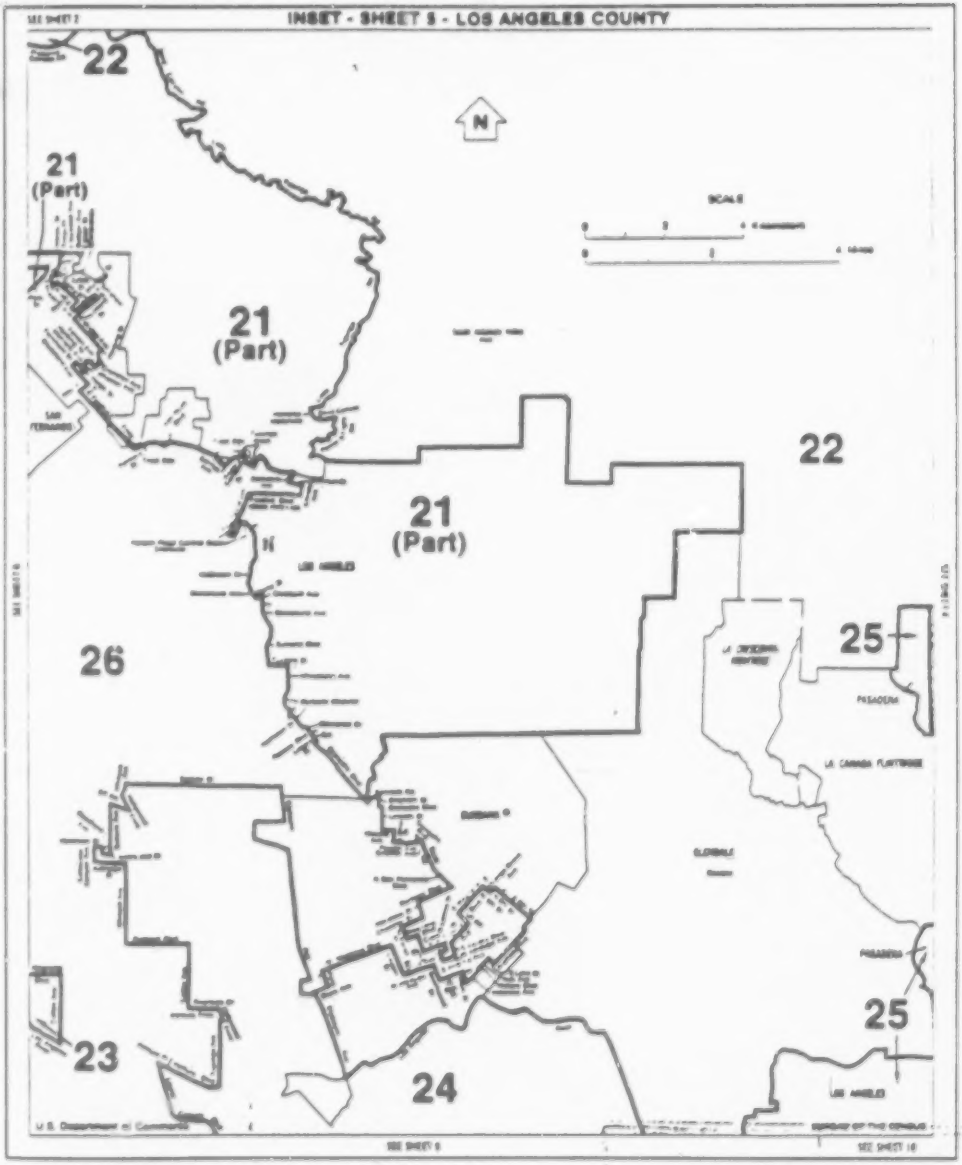
CONGRESSIONAL DISTRICTS OF THE 98TH CONGRESS

EXHIBIT E, PAGE 10

CALIFORNIA 6-87

101

Congressional Districts, Counties, and Selected Places



Congressional districts established January 3, 1983, as other boundaries are as of January 1, 1983.

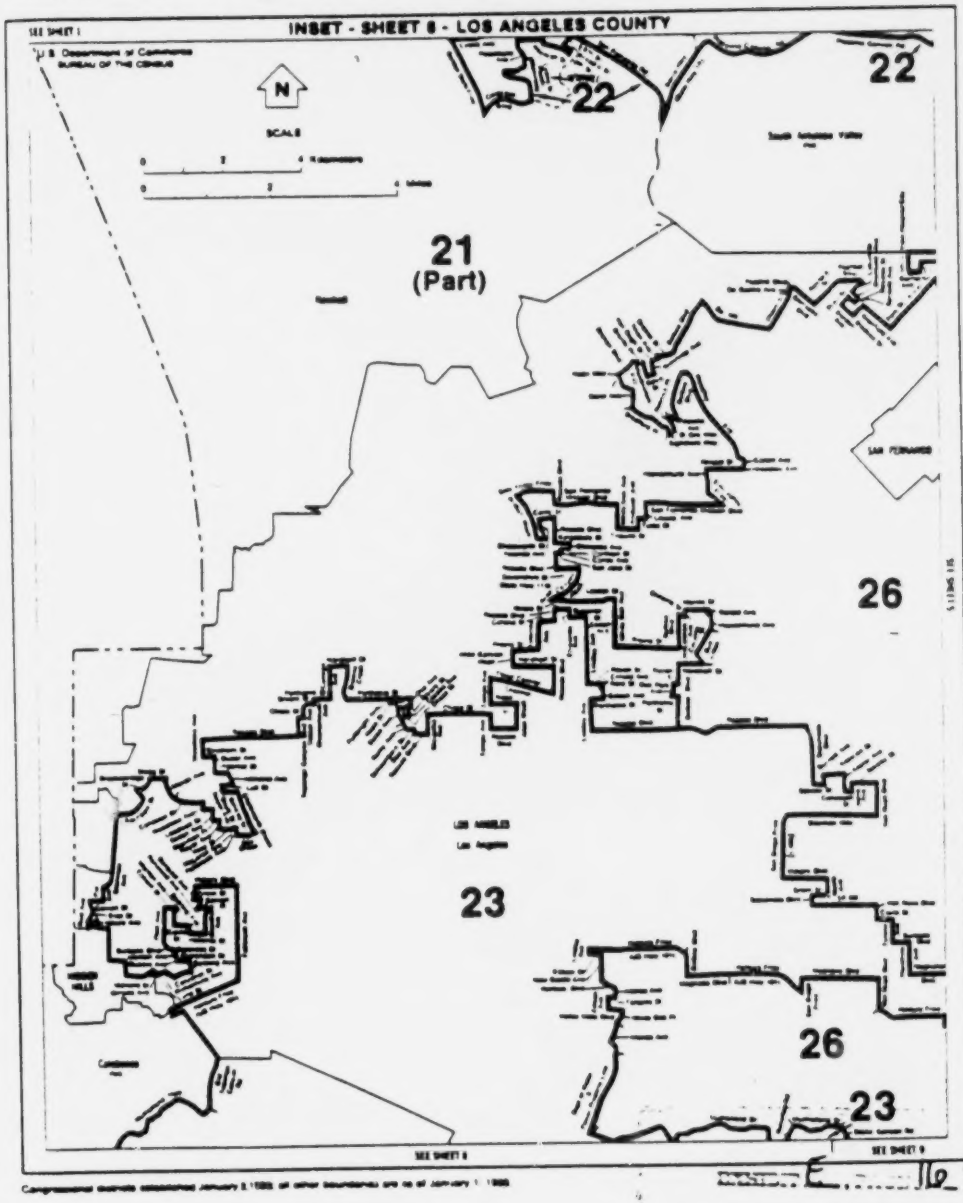
EXHIBIT E, PAGE 15 of 44

8-83 CALIFORNIA

CONGRESSIONAL DISTRICTS OF THE 98TH CONGRESS

102

Congressional Districts, Counties, and Selected Places



CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

CALIFORNIA 8-89

103

Congressional Districts, Counties, and Selected Places

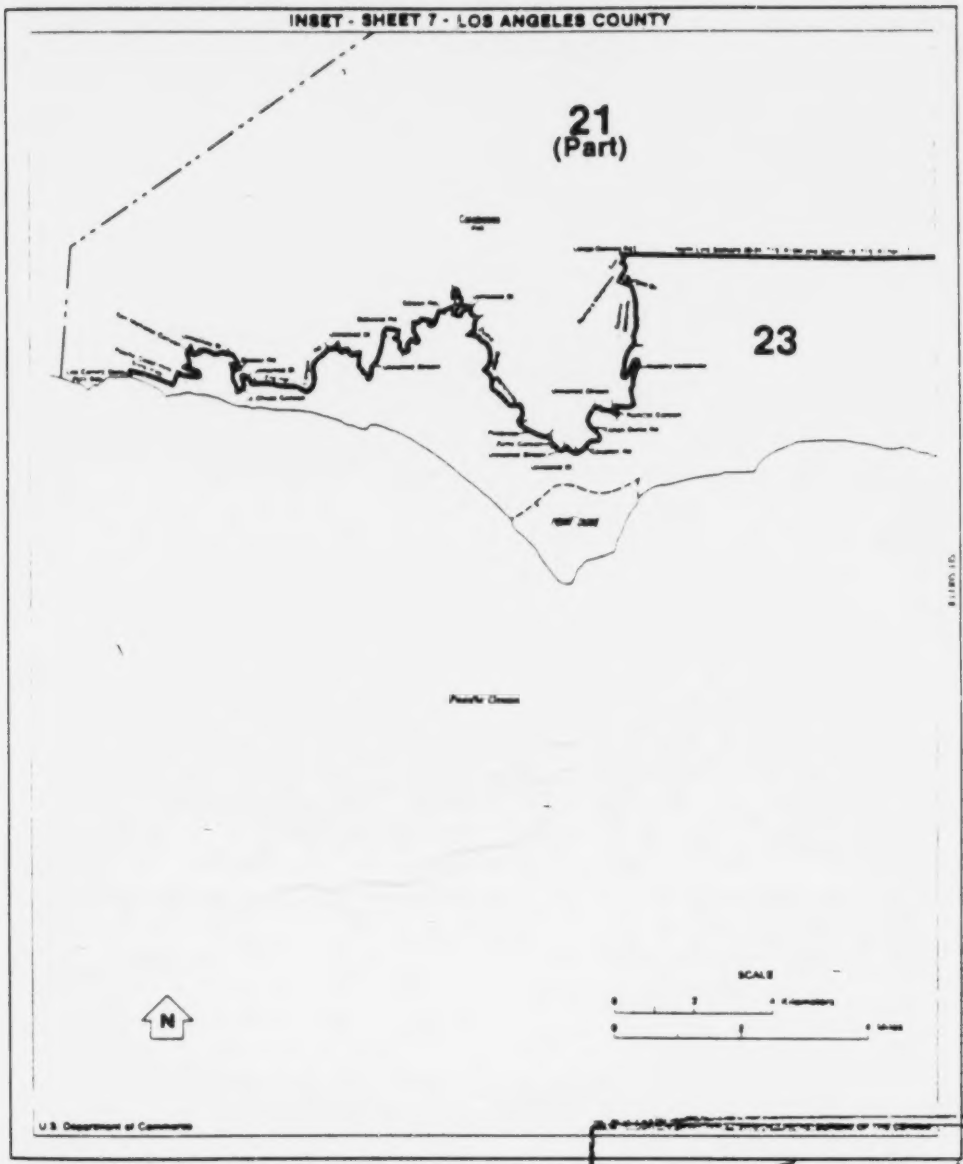


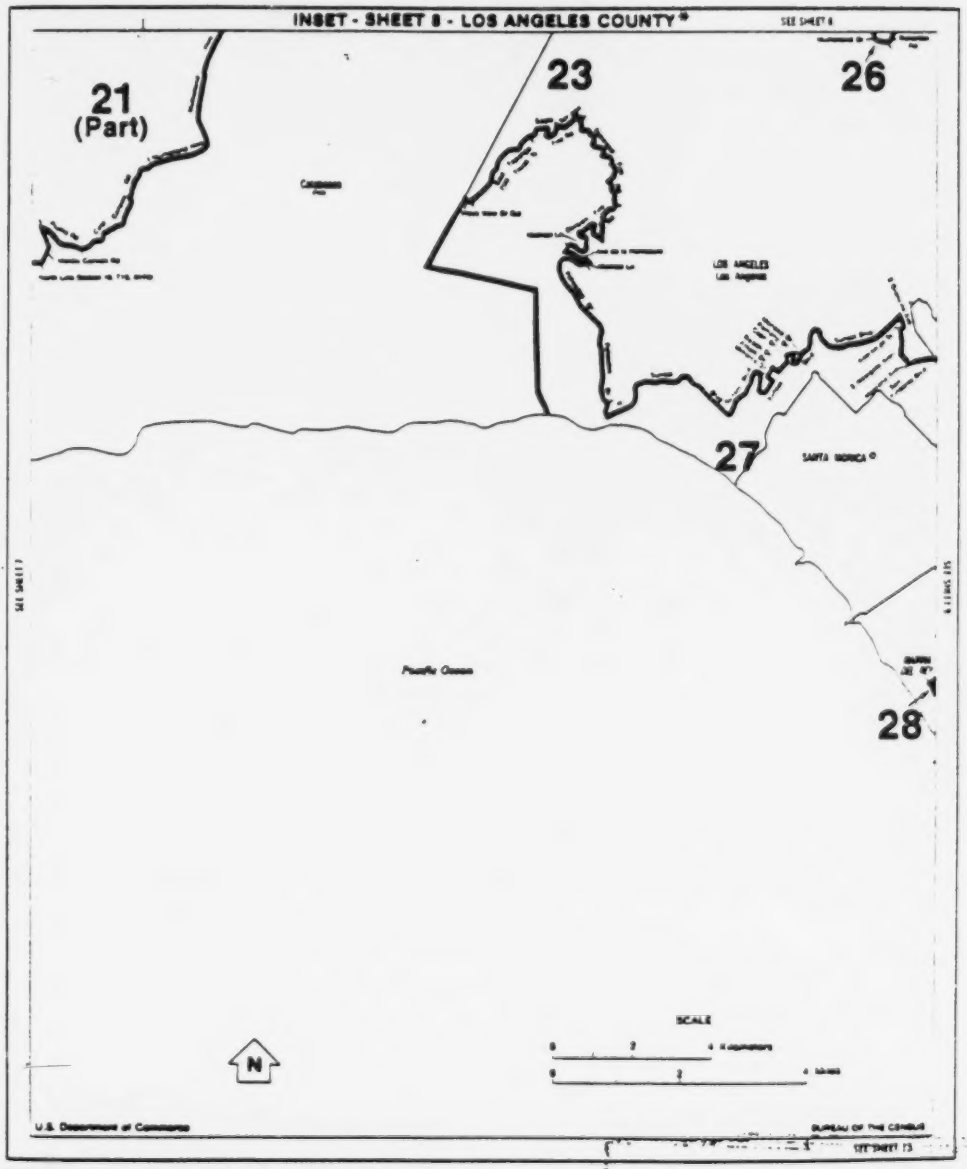
EXHIBIT E, PAGE 17 OF 49

6-90 CALIFORNIA

CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

104

Congressional Districts, Counties, and Selected Places



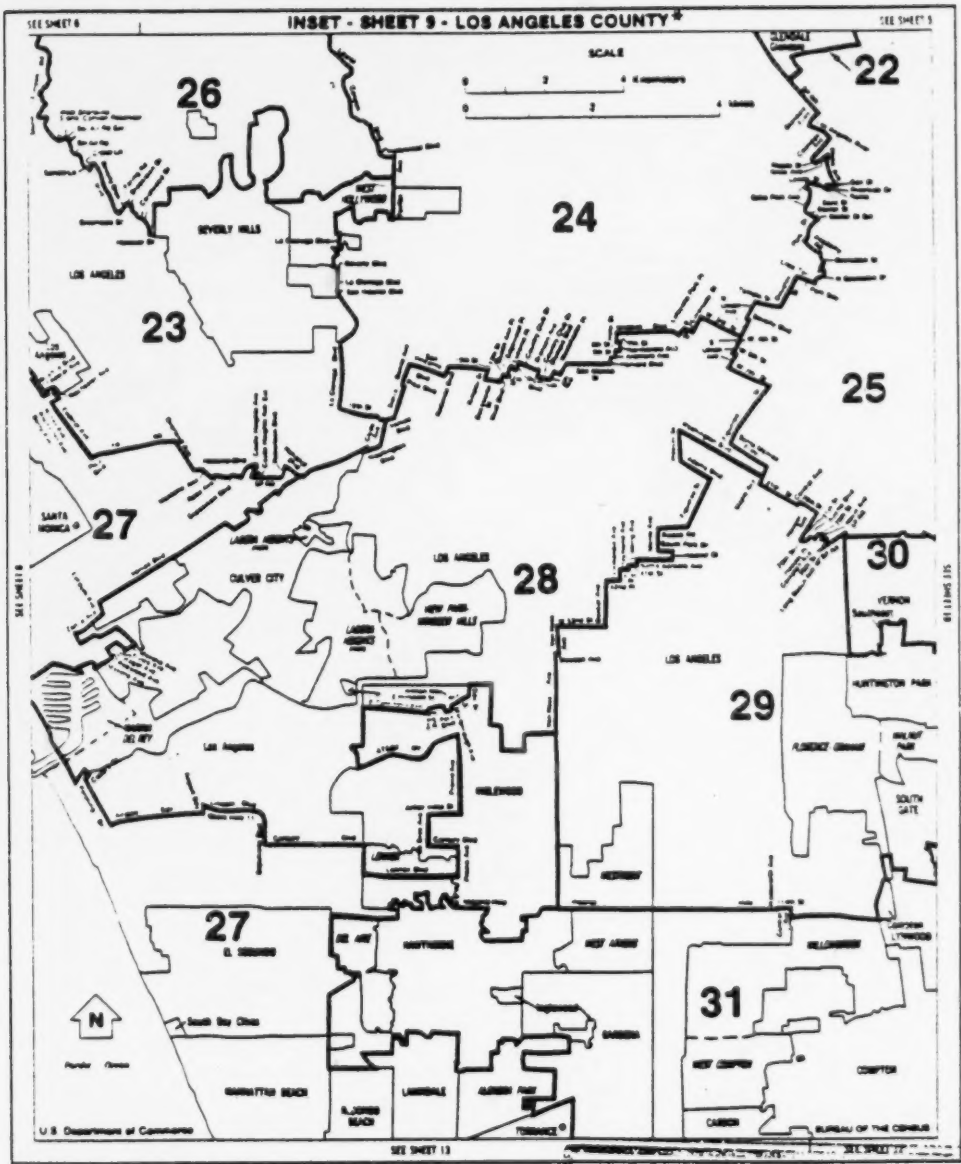
Congressional districts established January 3, 1983; all other boundaries are as of January 1, 1980.
*An enclosure description of Los Angeles county are assigned to congressional district 27

CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

EXHIBIT E, PAGE 18 of 44
CALIFORNIA 8-91

105

Congressional Districts, Counties, and Selected Places



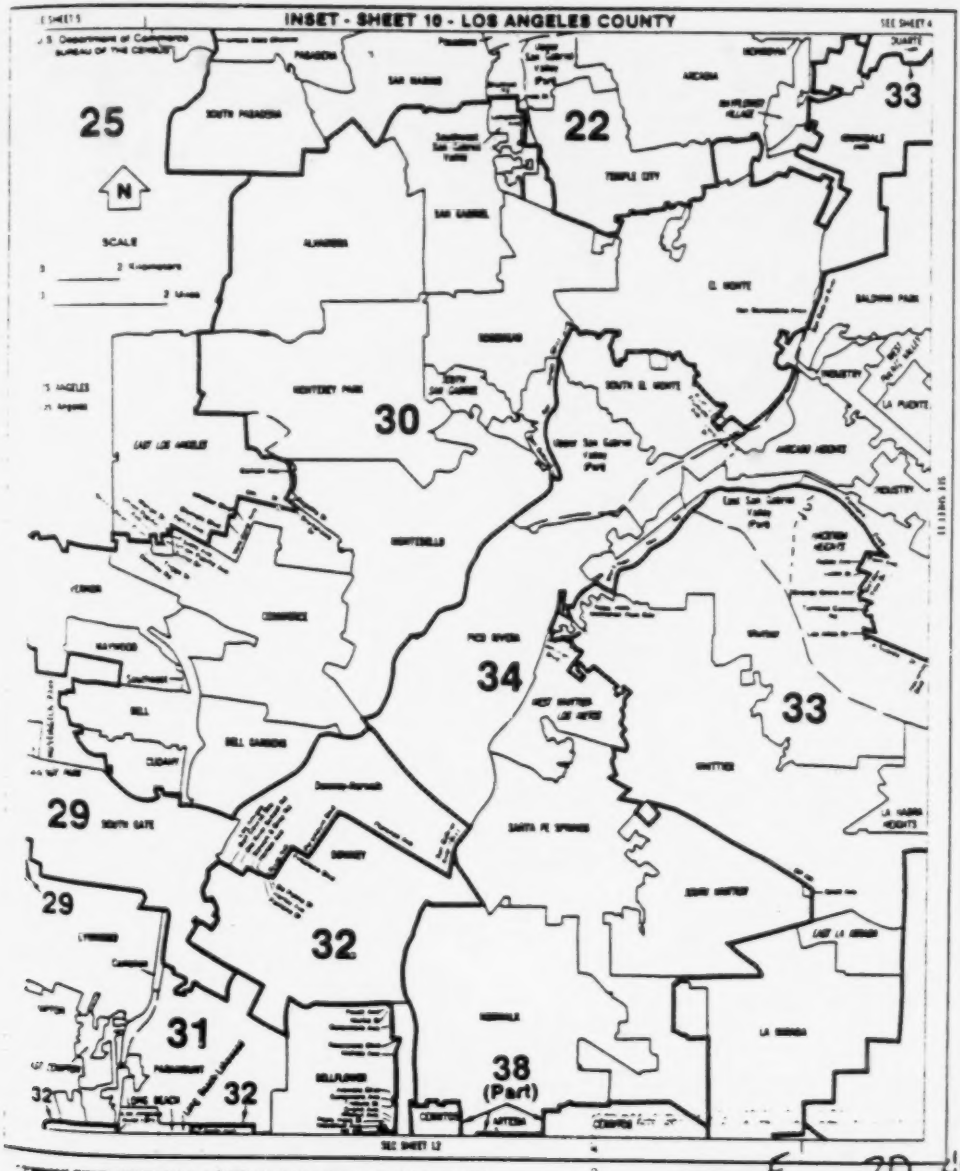
Congressional districts established January 3, 1983; all other boundaries are as of January 1, 1980.
*All unassigned population in Los Angeles county are assigned to congressional district 27

8-82 CALIFORNIA

EXHIBIT E PAGE 19 OF 44
CONGRESSIONAL DISTRICTS OF THE 98TH CONGRESS

106

Congressional Districts, Counties, and Selected Places



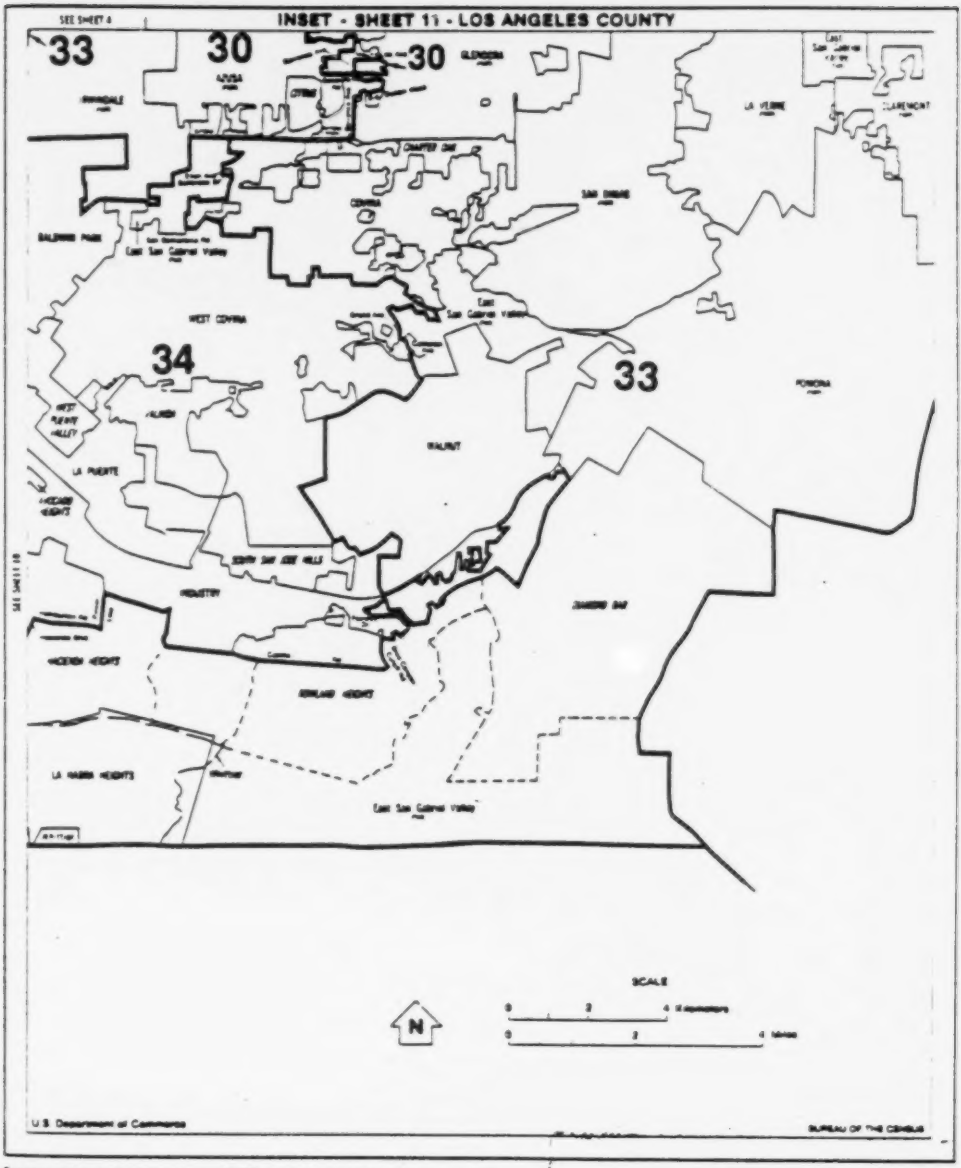
CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

107

EXHIBIT E, PAGE 20 OF 44

CALIFORNIA 6-83

Congressional Districts, Counties, and Selected Places



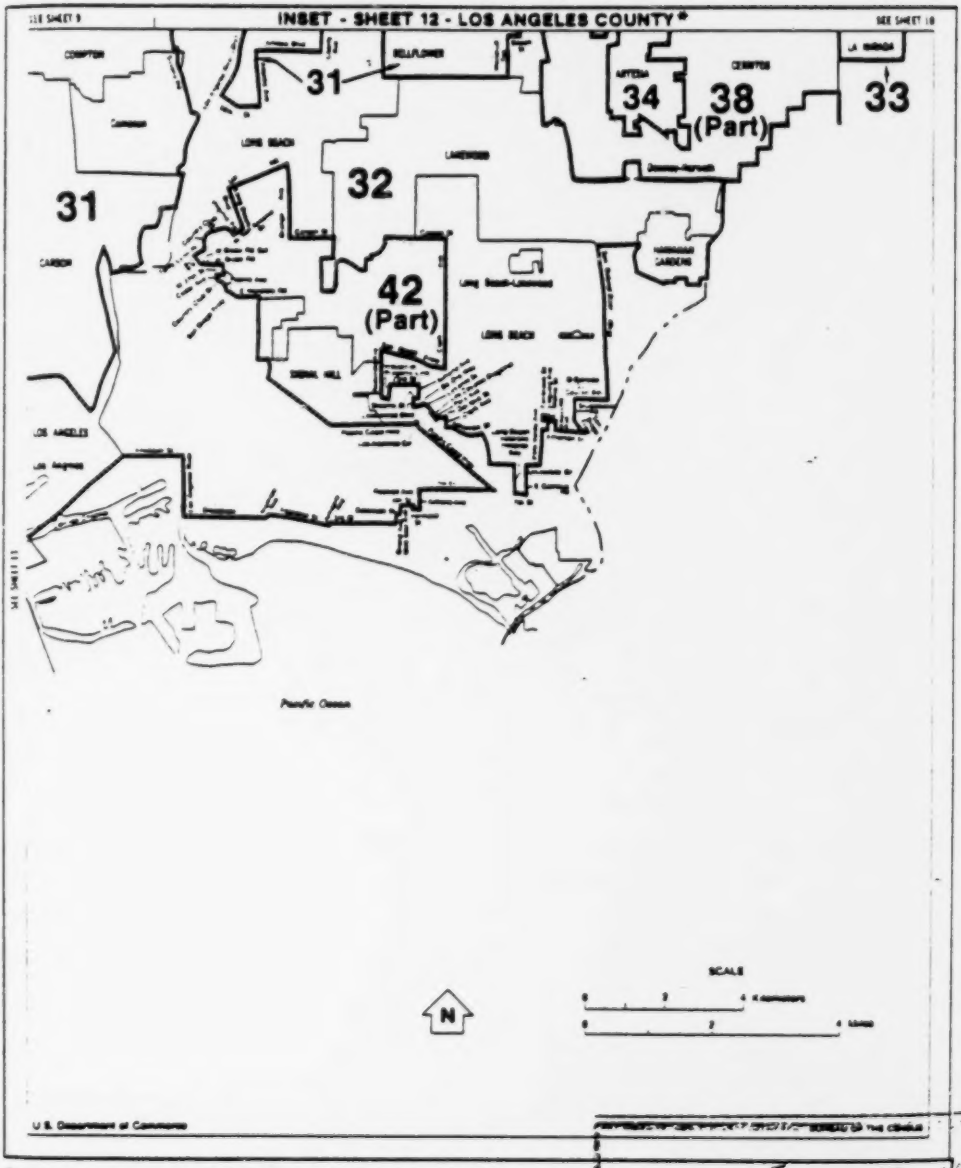
E-21-44

8-94 CALIFORNIA

CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

108

Congressional Districts, Counties, and Selected Places



U.S. Department of Commerce

*All precincts assignment in Los Angeles county are assigned to congressional district 27

CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

CALIFORNIA 6-95

EXHIBIT E, PAGE 22 OF 44

109

Congressional Districts, Counties, and Selected Places

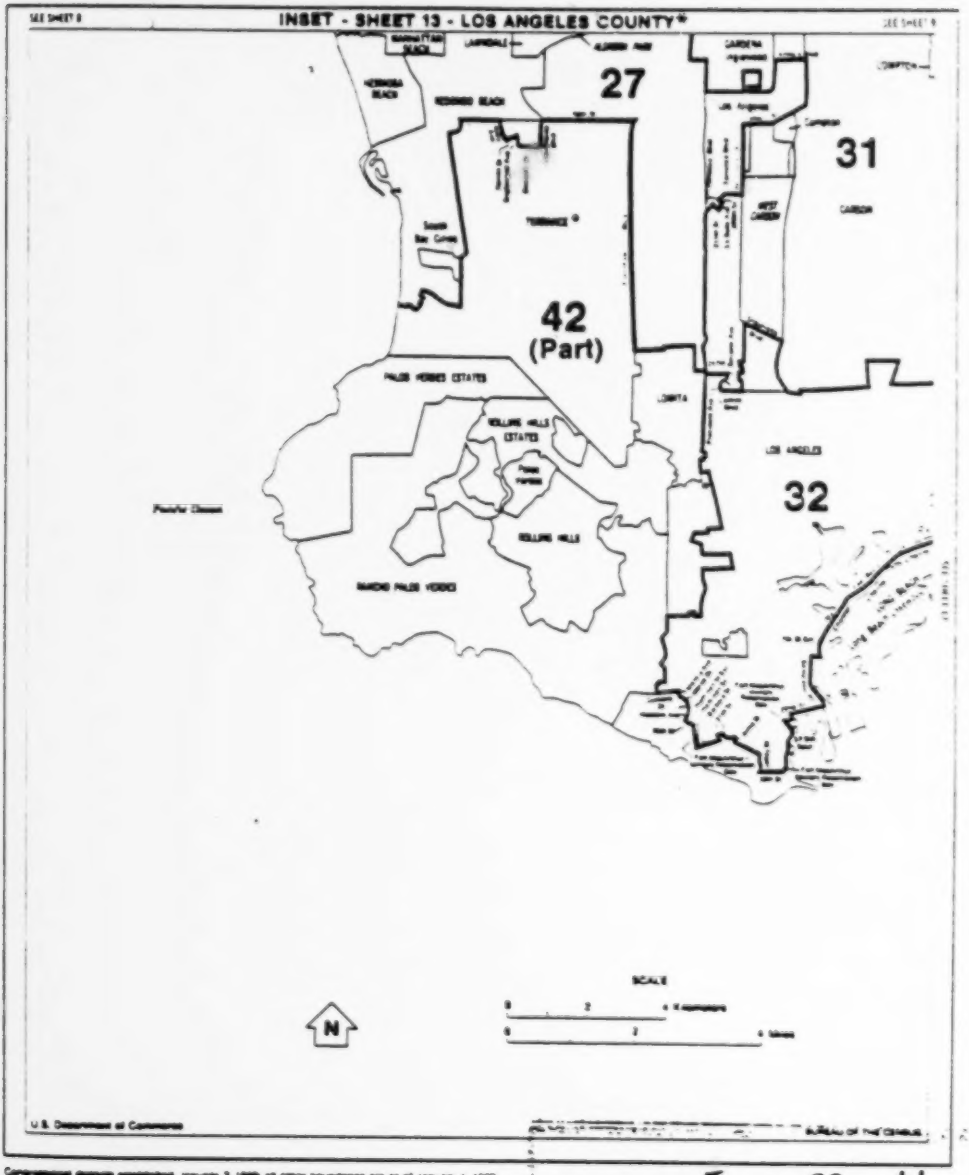


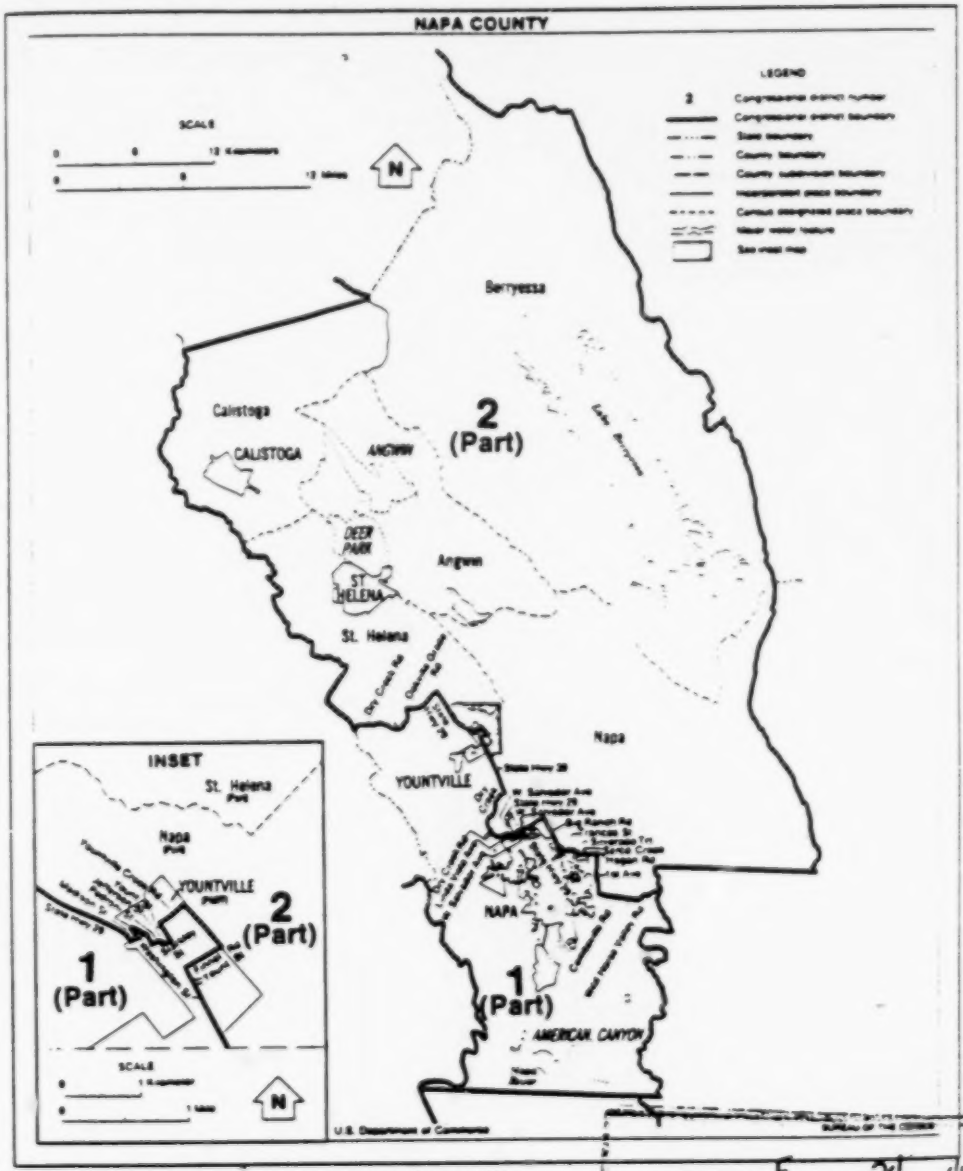
EXHIBIT E, PAGE 23 OF 44

CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

8-98 CALIFORNIA

110

Congressional Districts, Counties, and Selected Places



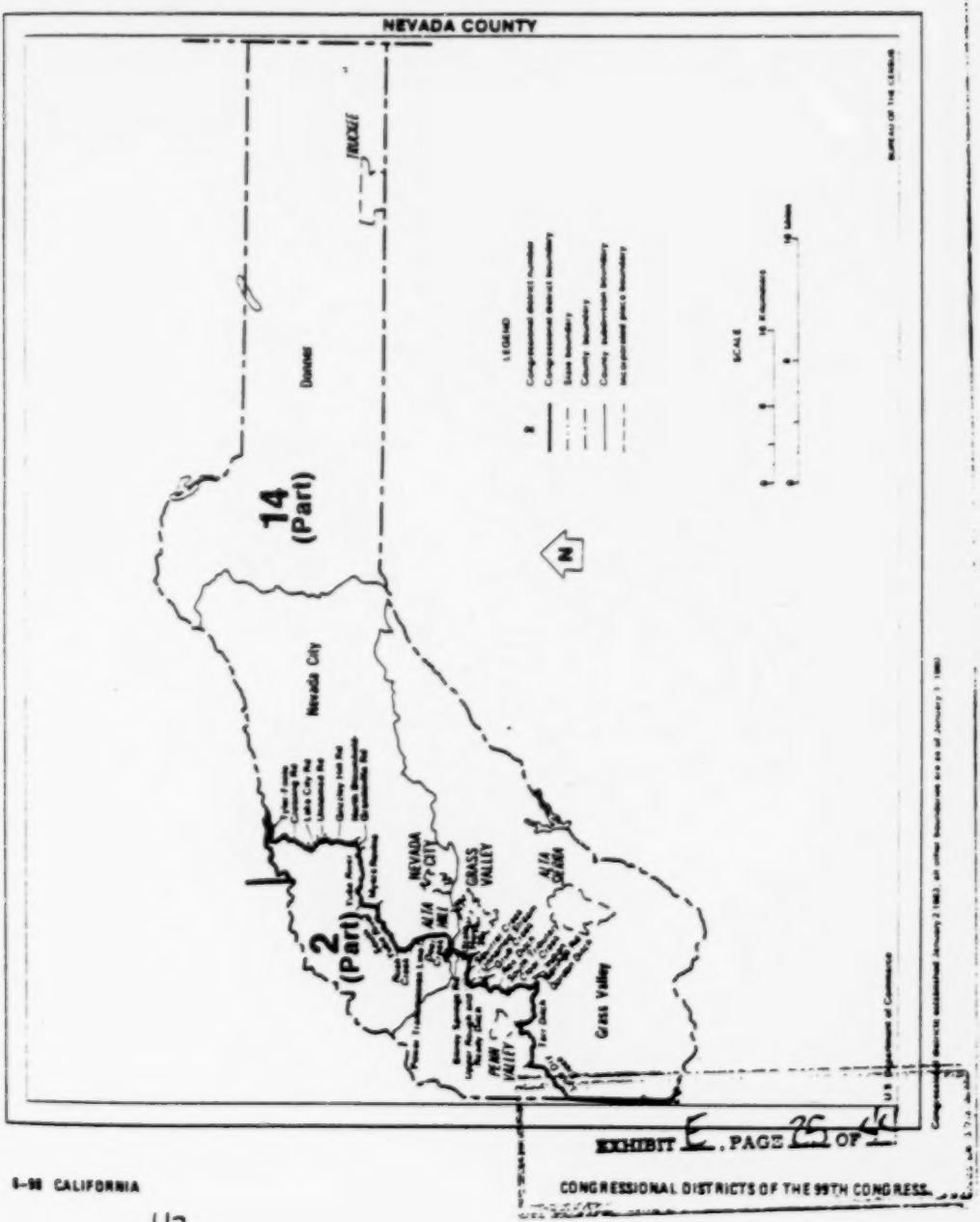
CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

CALIFORNIA 8-87

EXHIBIT E, PAGE 29 OF 44

111

Congressional Districts, Counties, and Selected Places



112

Congressional Disticts, Counties, and Selected Places

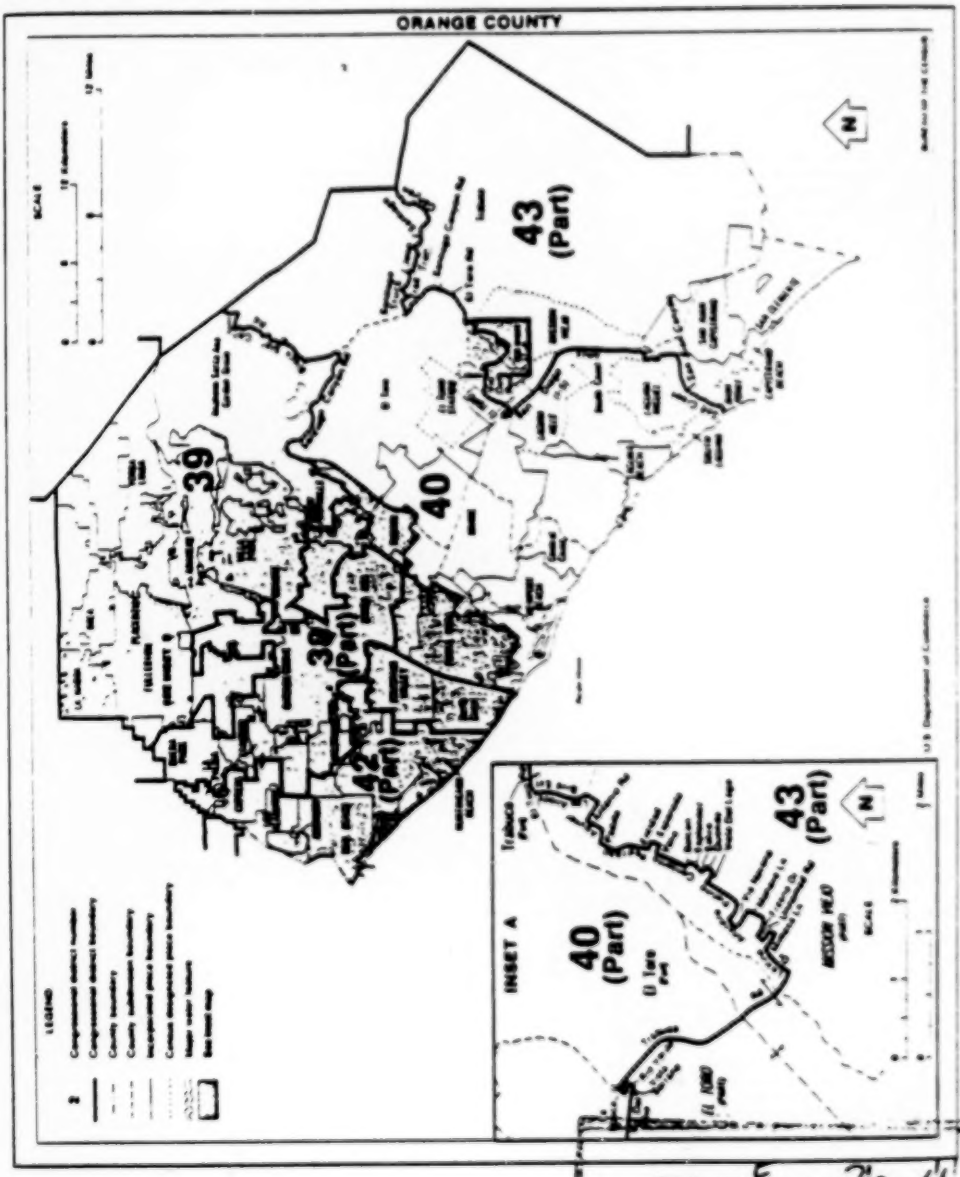


EXHIBIT E, PAGE 216 OF 49

CONGRESSIONAL DISTRICTS OF THE 98TH CONGRESS

CALIFORNIA 8-81

113

Congressional Districts, Counties, and Selected Places

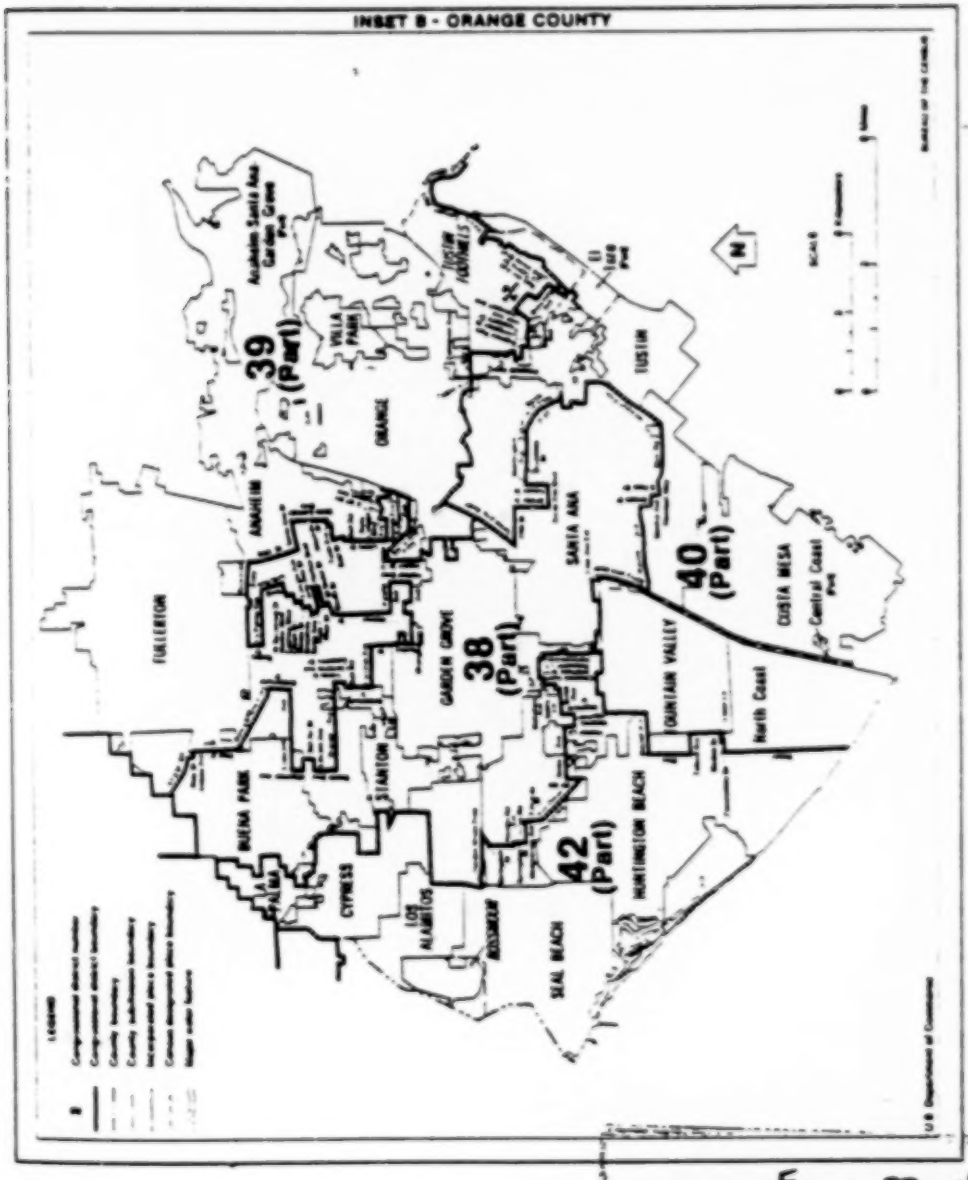


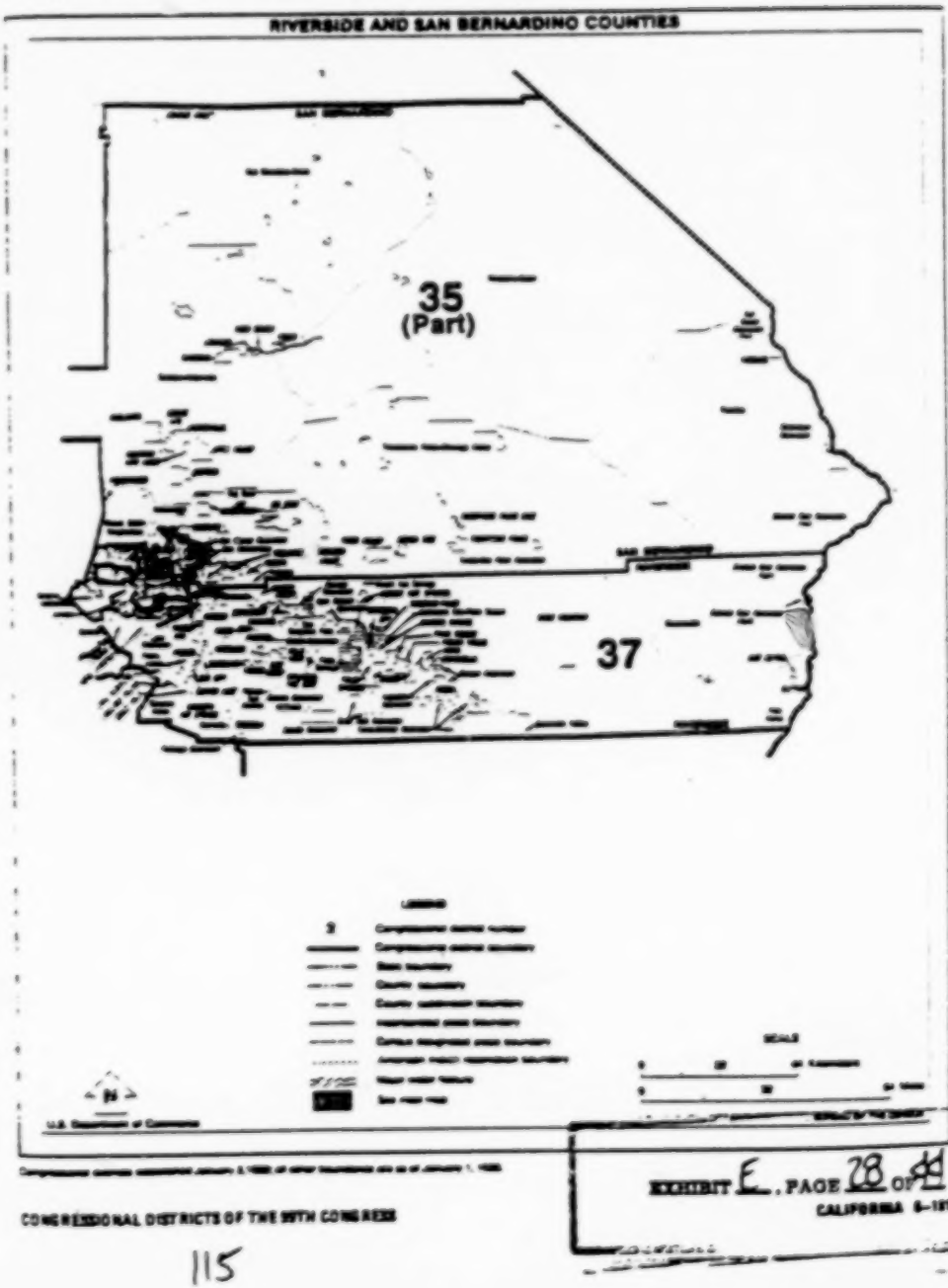
EXHIBIT E, PAGE 27 OF 44

8-100 CALIFORNIA

CONGRESSIONAL DISTRICTS OF THE 98TH CONGRESS

114

Congressional Districts, Counties, and Selected Places



Congressional Districts, Counties, and Selected Places

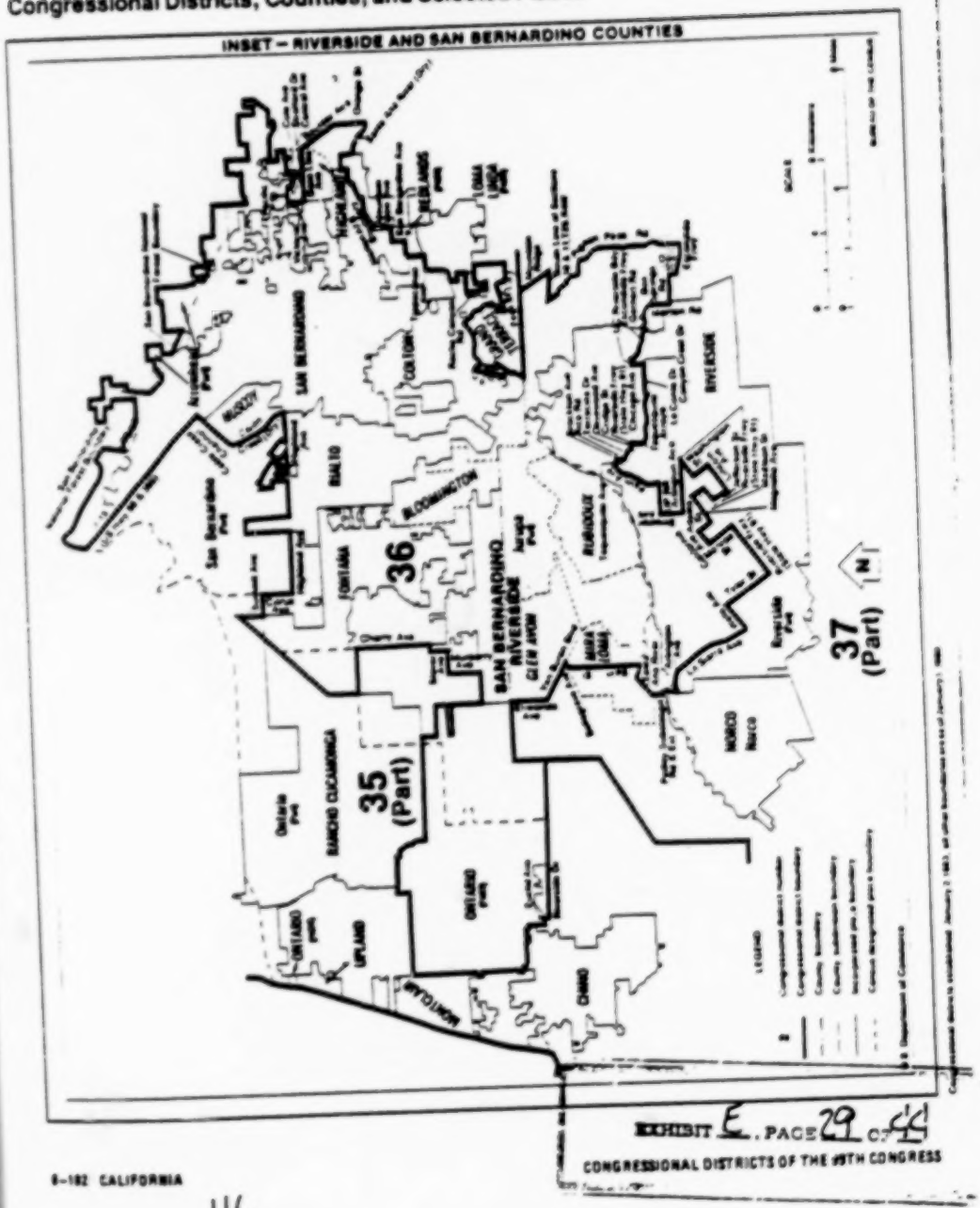


EXHIBIT E, PAGE 29 OF 44

CONGRESSIONAL DISTRICTS OF THE 98TH CONGRESS

8–182 CALIFORNIA

116

Congressional Districts, Counties, and Selected Places

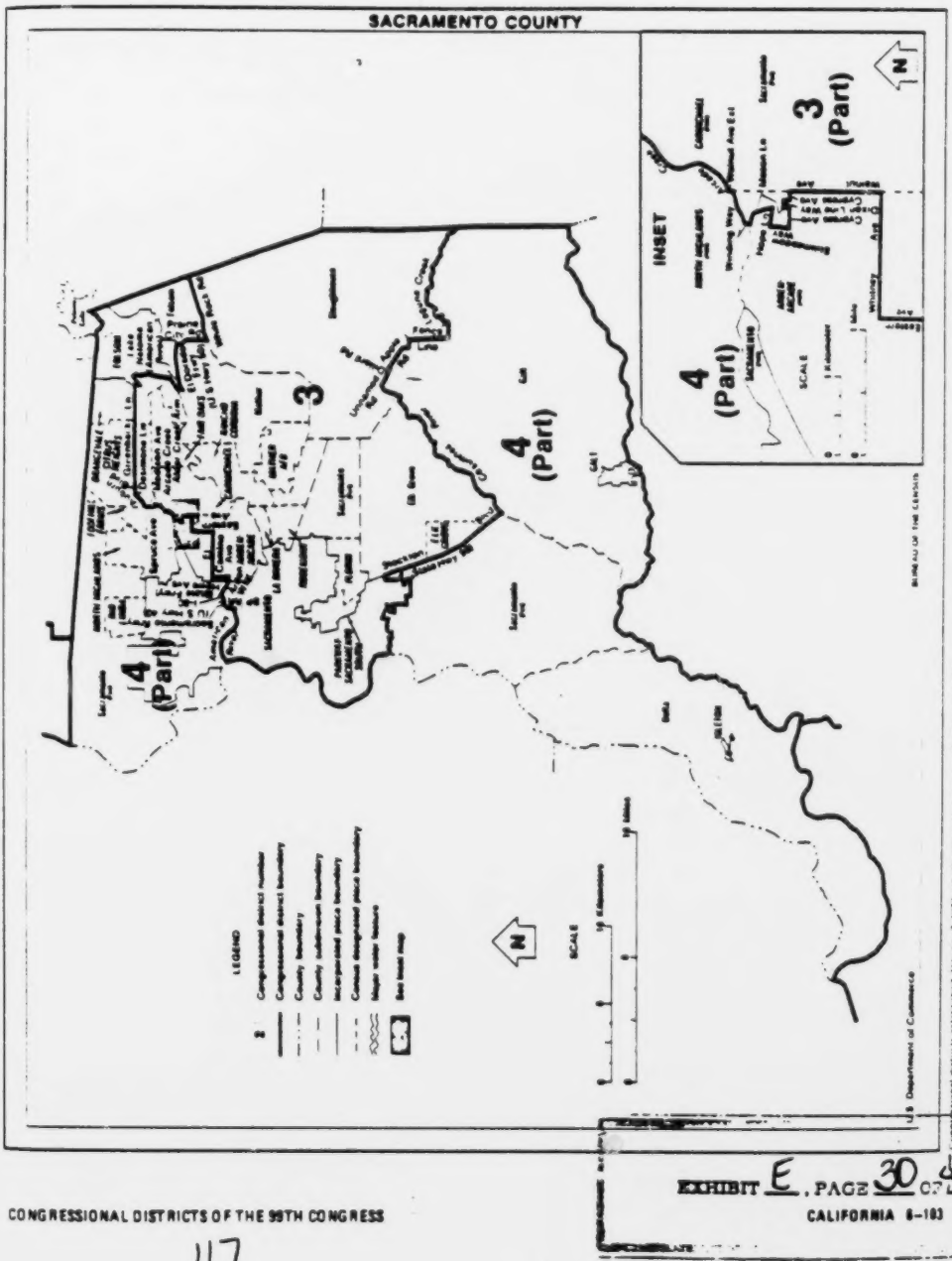


EXHIBIT E, PAGE 30 OF 42

CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

CALIFORNIA 6-103

117

Congressional Disticts, Counties, and Selected Places

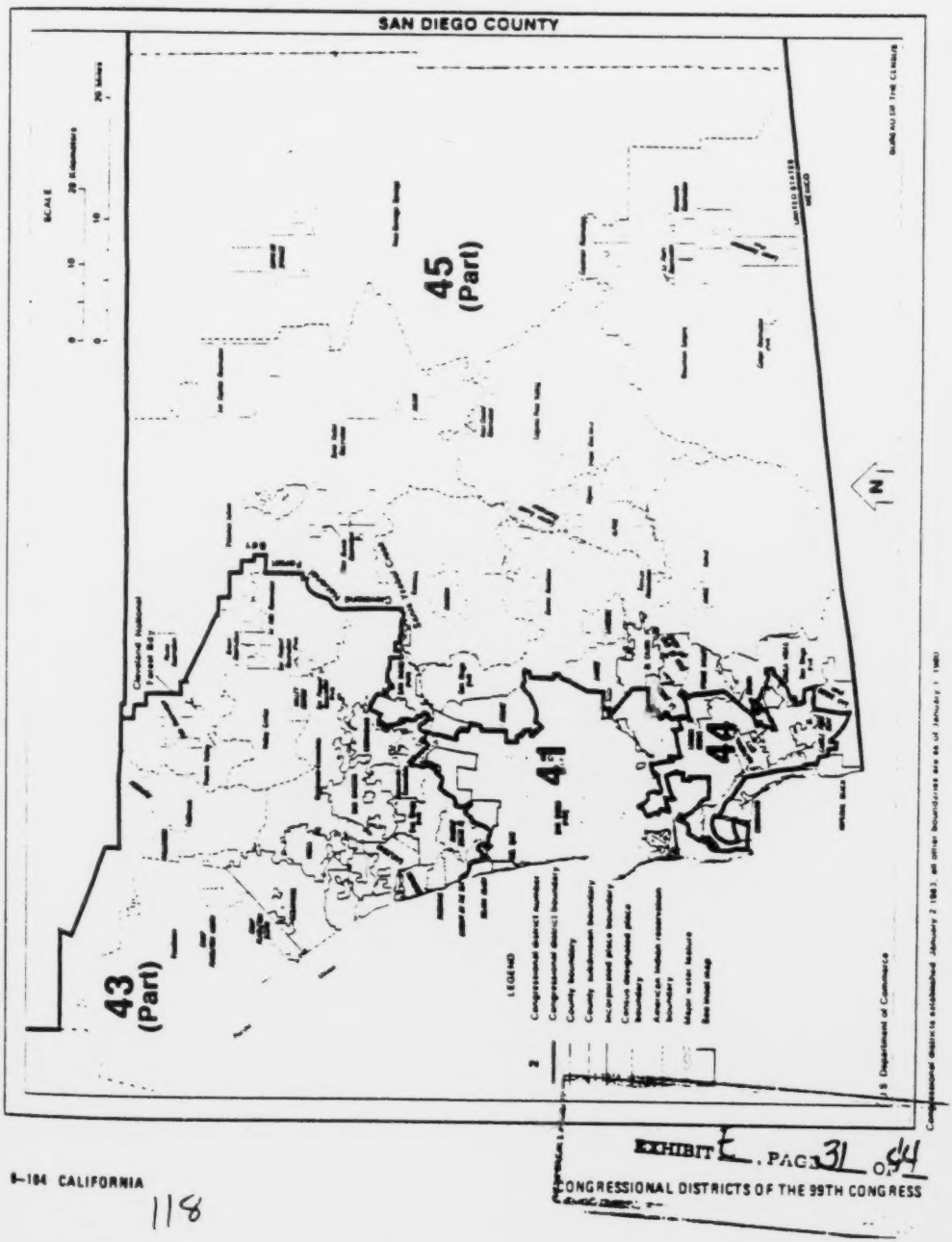
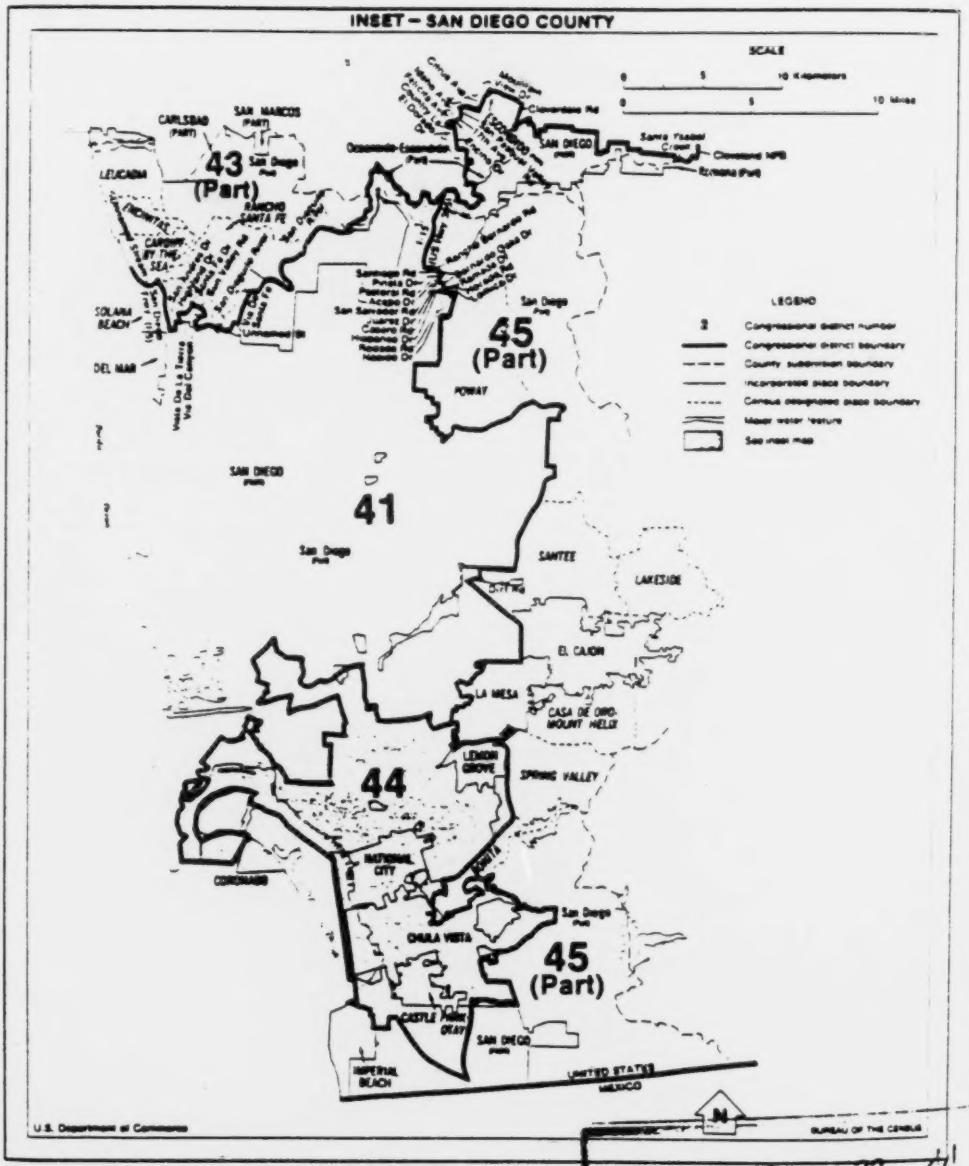


EXHIBIT E, PAGE 31 OF 44

CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

Congressional Districts, Counties, and Selected Places



Congressional districts established January 2, 1982; all other boundaries are as of January 1, 1980

CONGRESSIONAL DISTRICTS OF THE 98TH CONGRESS

CALIFORNIA S–105

EXHIBIT E, PAGE 32 OF 44

119

Congressional Districts, Counties, and Selected Places

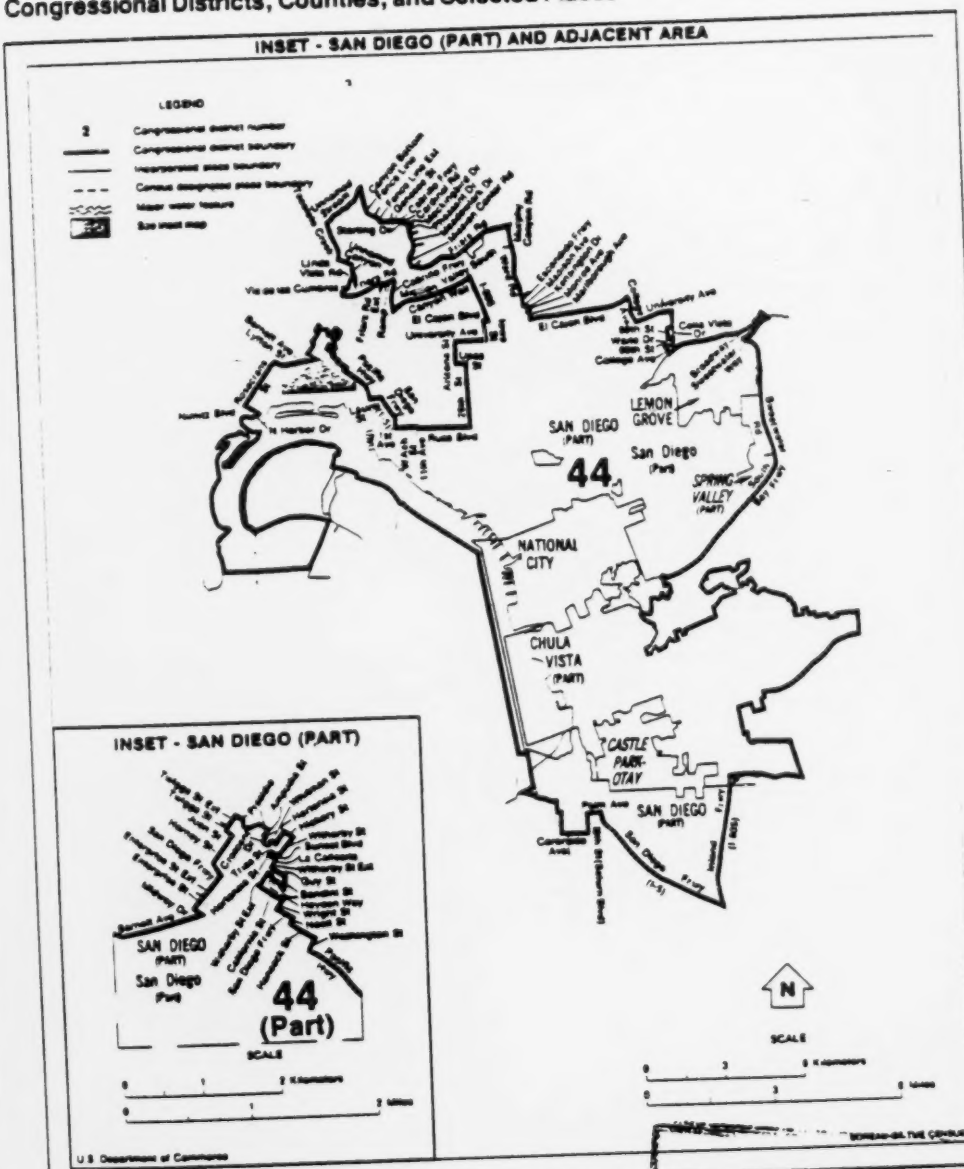


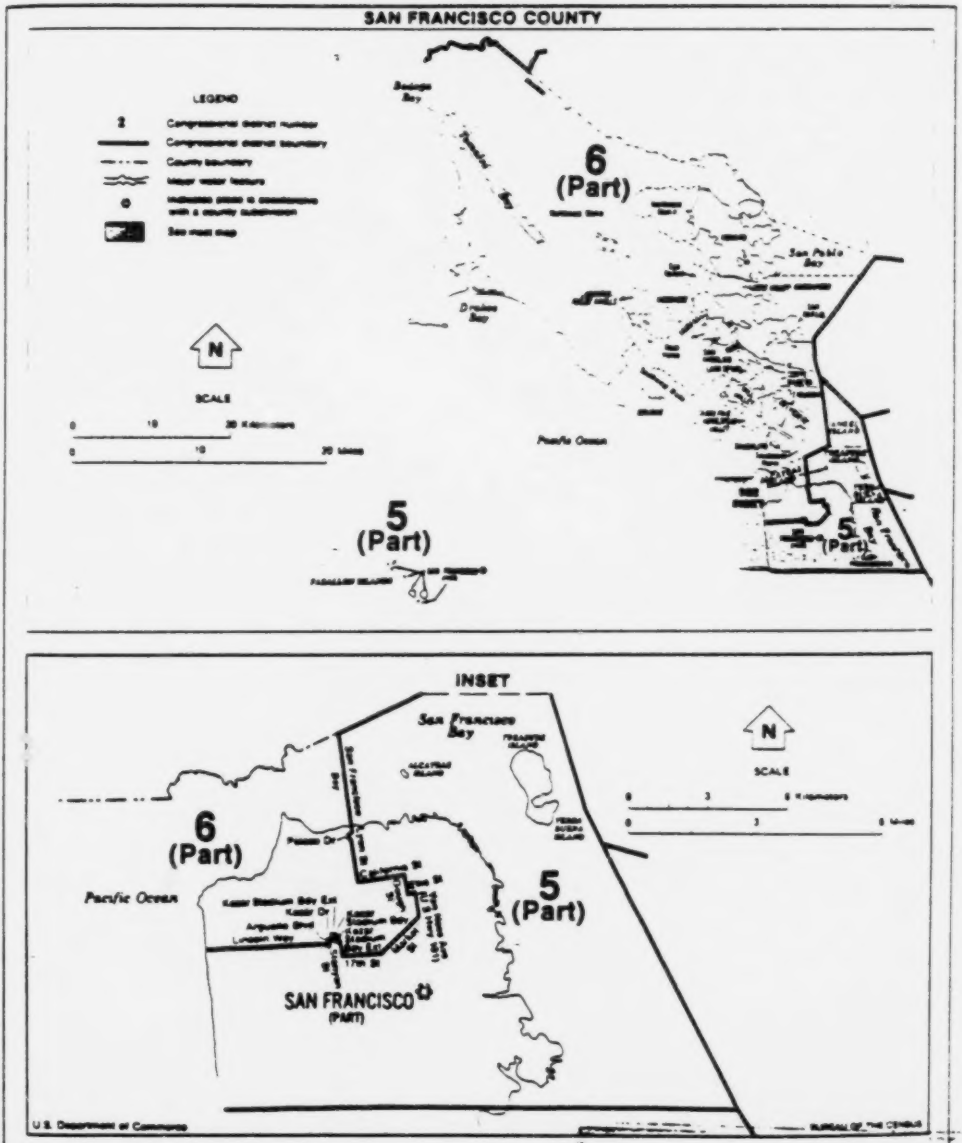
EXHIBIT E, PAGE 33 OF 44

CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

6–196 CALIFORNIA

120

Congressional Districts, Counties, and Selected Places



CONGRESSIONAL DISTRICTS OF THE 98TH CONGRESS

EXHIBIT E, PAGE 34 OF 44

CALIFORNIA 6-107

121

Congressional Districts, Counties, and Selected Places

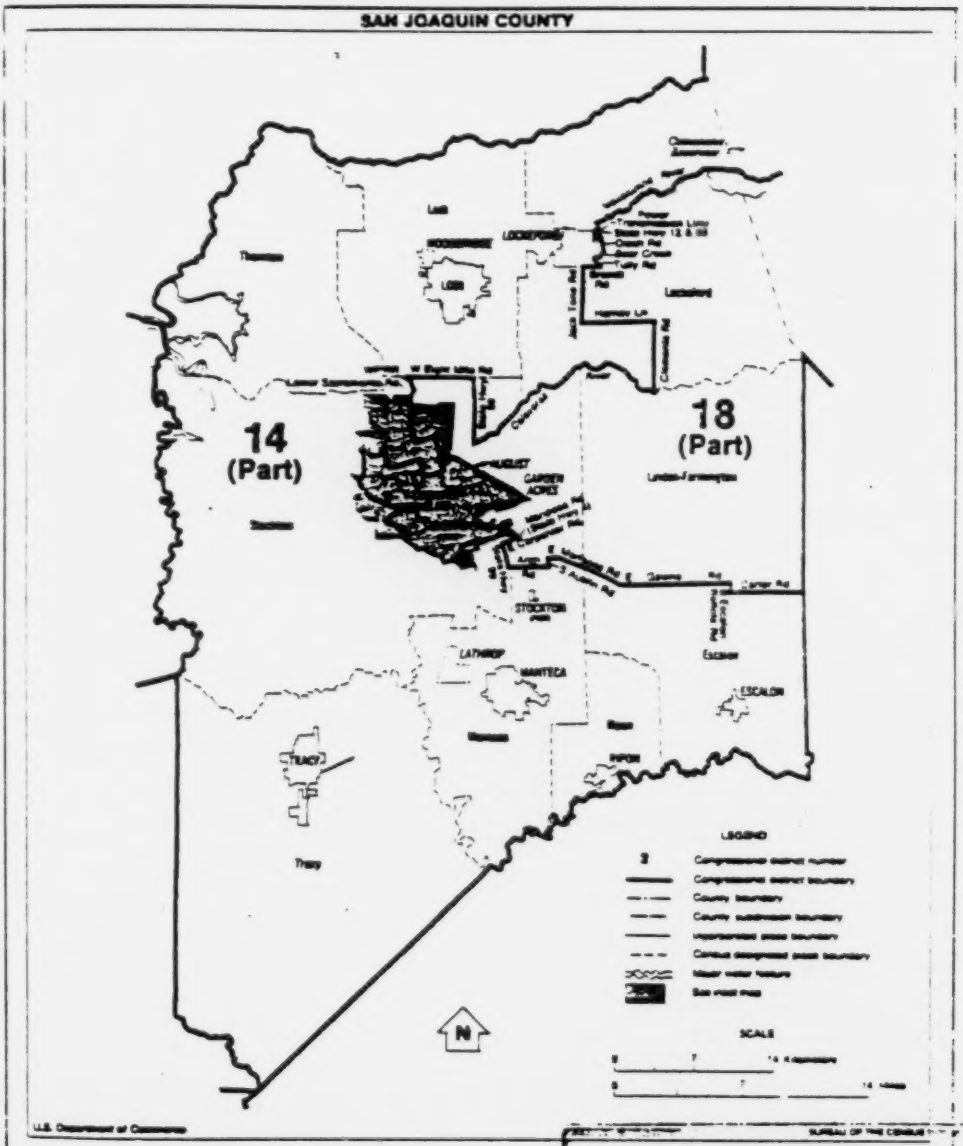


EXHIBIT E, PAGE 35 OF 44

CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

6—186 CALIFORNIA

122

Congressional Districts, Counties, and Selected Places

CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

123

EXHIBIT E, PAGE 30 OF 41

CALIFORNIA 6-1B

Congressional Districts, Counties, and Selected Places

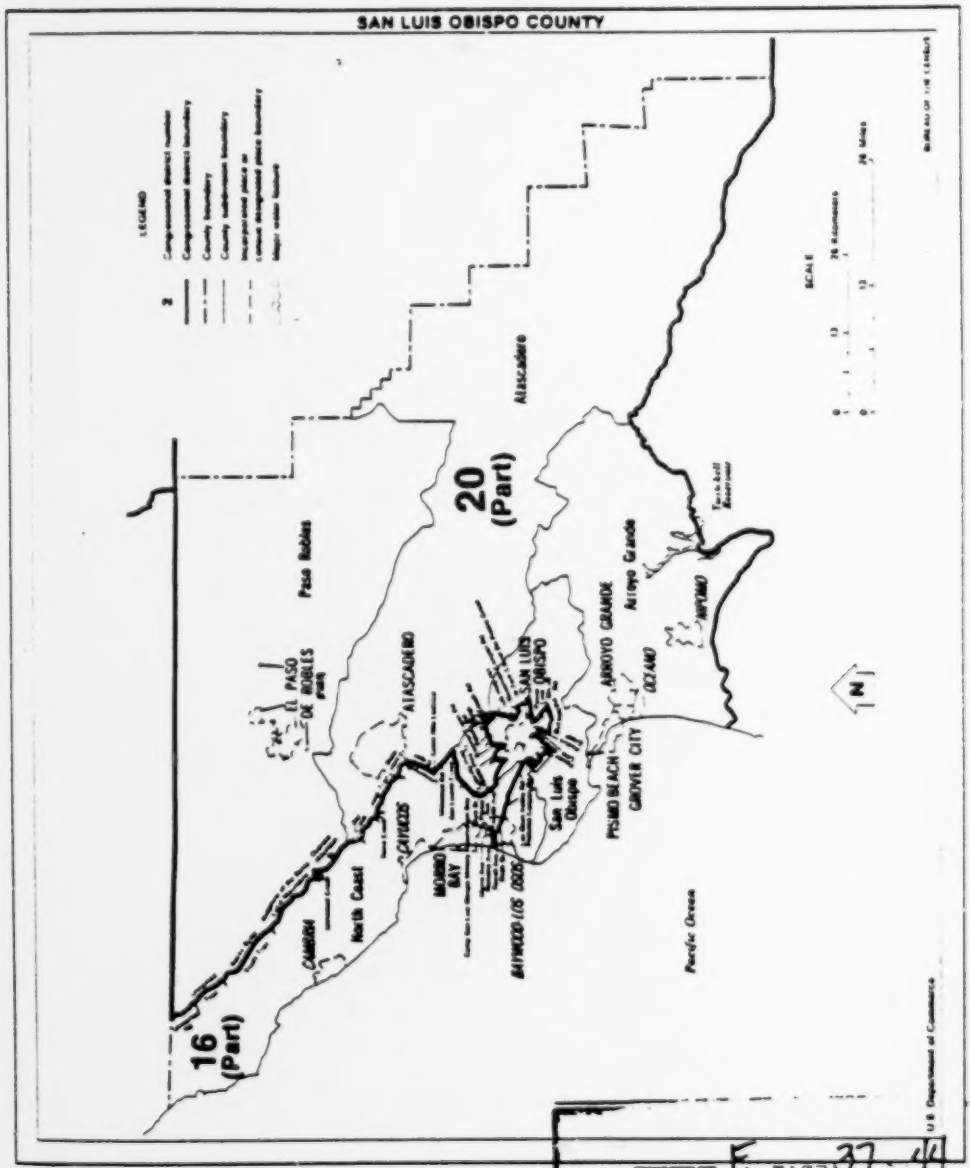


EXHIBIT E PAGE 37 OF 44

6-118 CALIFORNIA

CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

129

Congressional Districts, Counties, and Selected Places

Congressional districts established January 3, 1983; all other boundaries are as of January 1, 1980

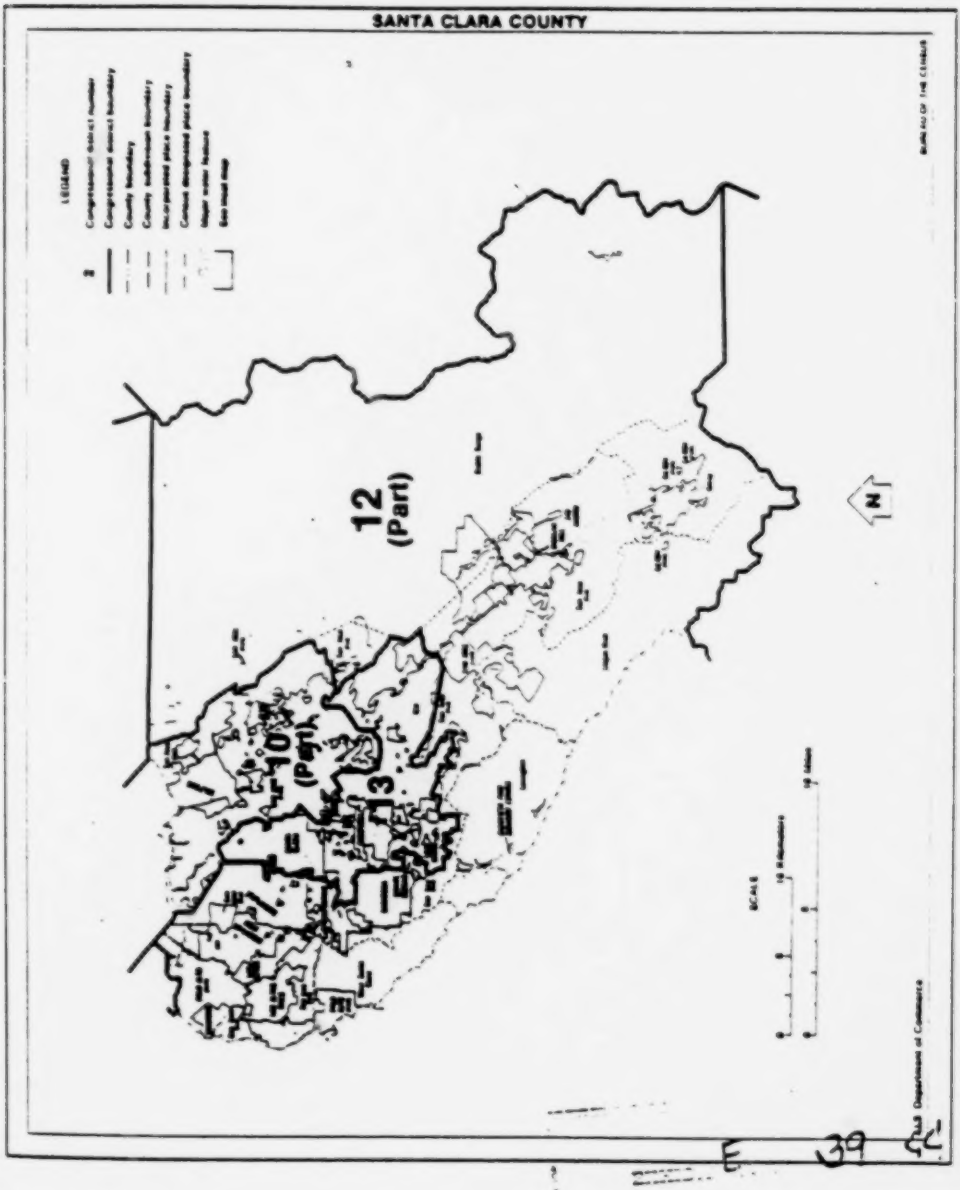
CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

CALIFORNIA 8-111

EXHIBIT E 38 44

125

Congressional Districts, Counties, and Selected Places

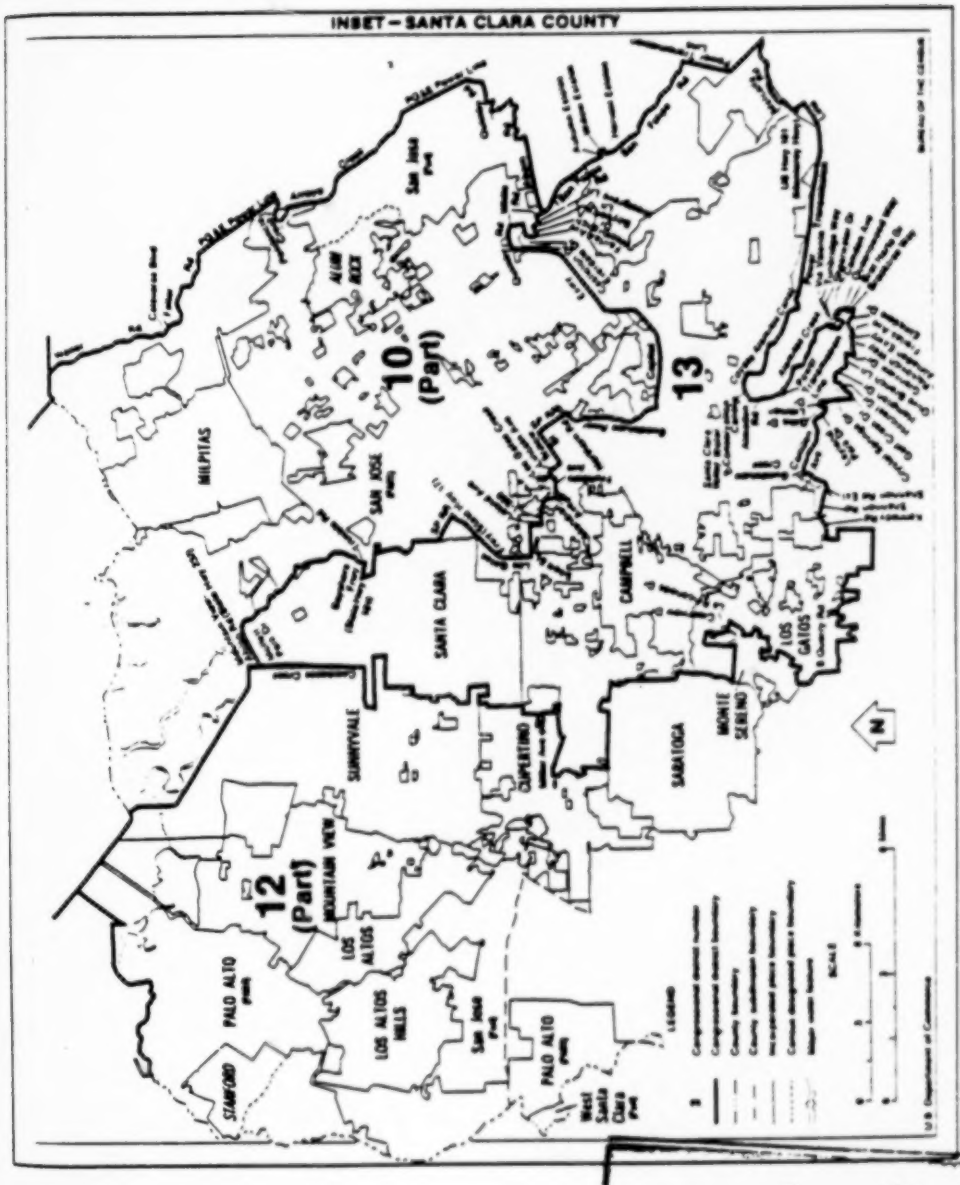


8-112 CALIFORNIA

CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

126

Congressional Districts, Counties, and Selected Places



CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

127

EXHIBIT E, PAGE 40 OF 44

Congressional Districts, Counties, and Selected Places

EXHIBIT E, PAGE 41 OF 44

CONGRESSIONAL DISTRICTS OF THE 99TH CONGRESS

6-114 CALIFORNIA

128

Congressional Districts, Counties, and Selected Places

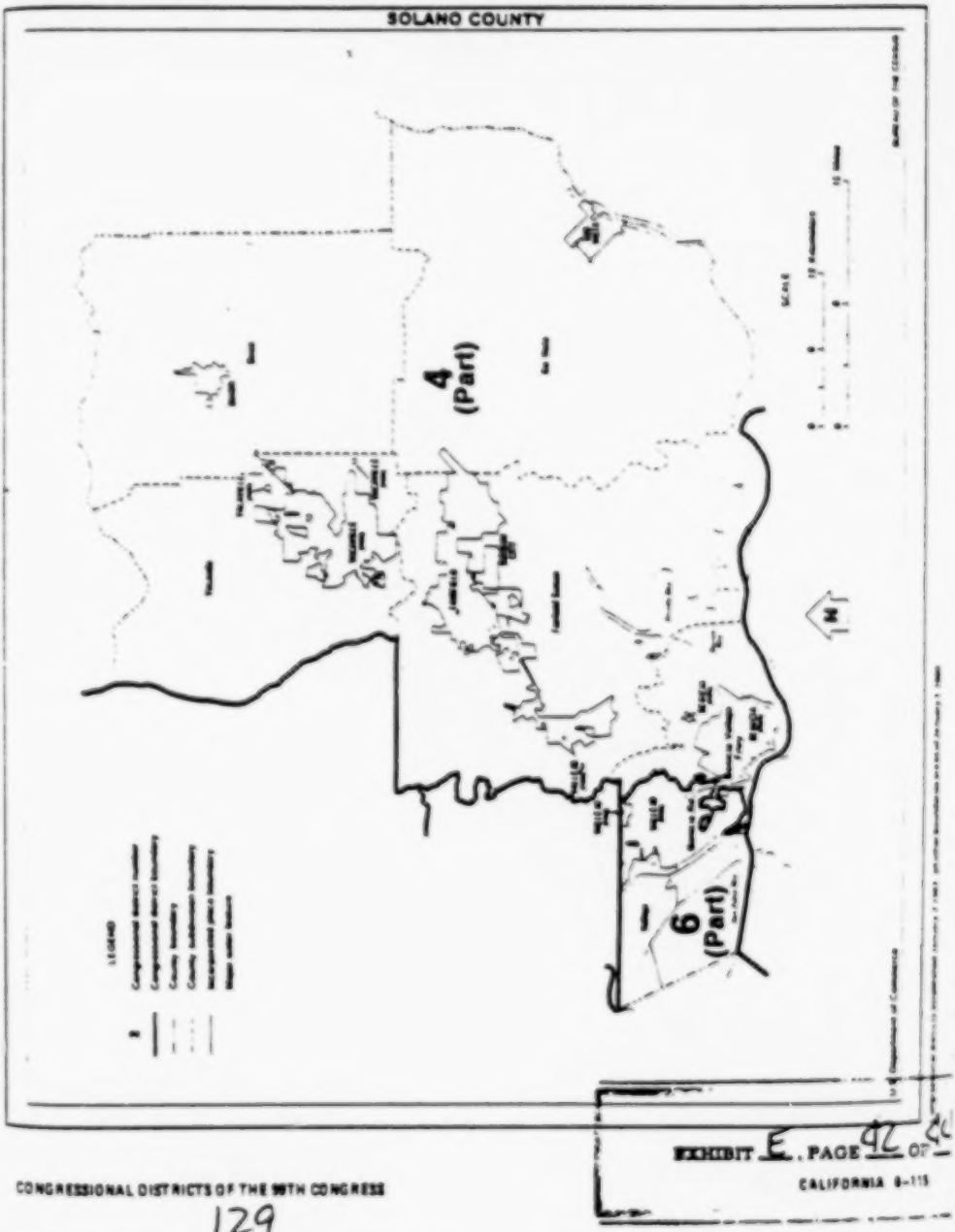


EXHIBIT E, PAGE 42 OF 42

CONGRESSIONAL DISTRICTS OF THE 98TH CONGRESS

CALIFORNIA 6-115

129

Congressional Districts, Counties, and Selected Places

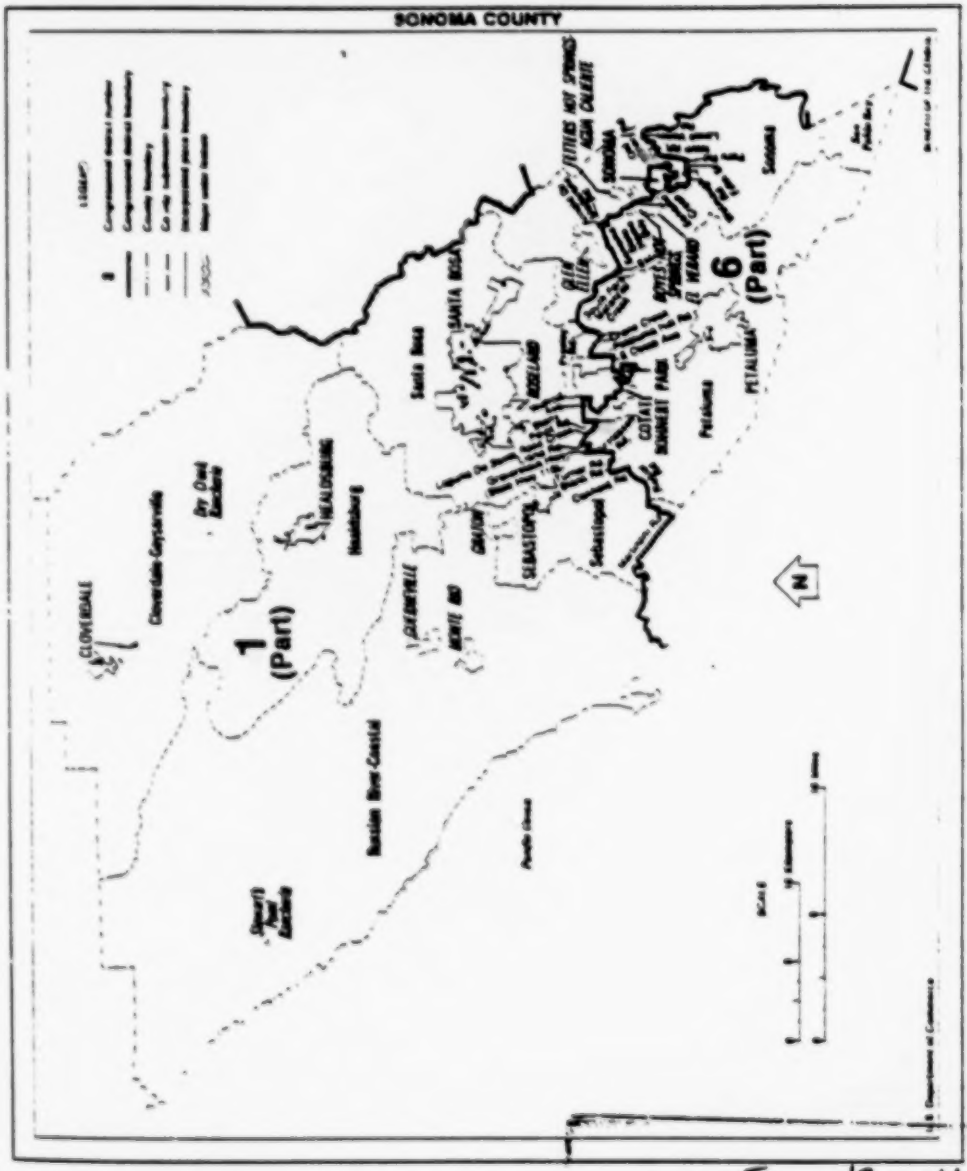


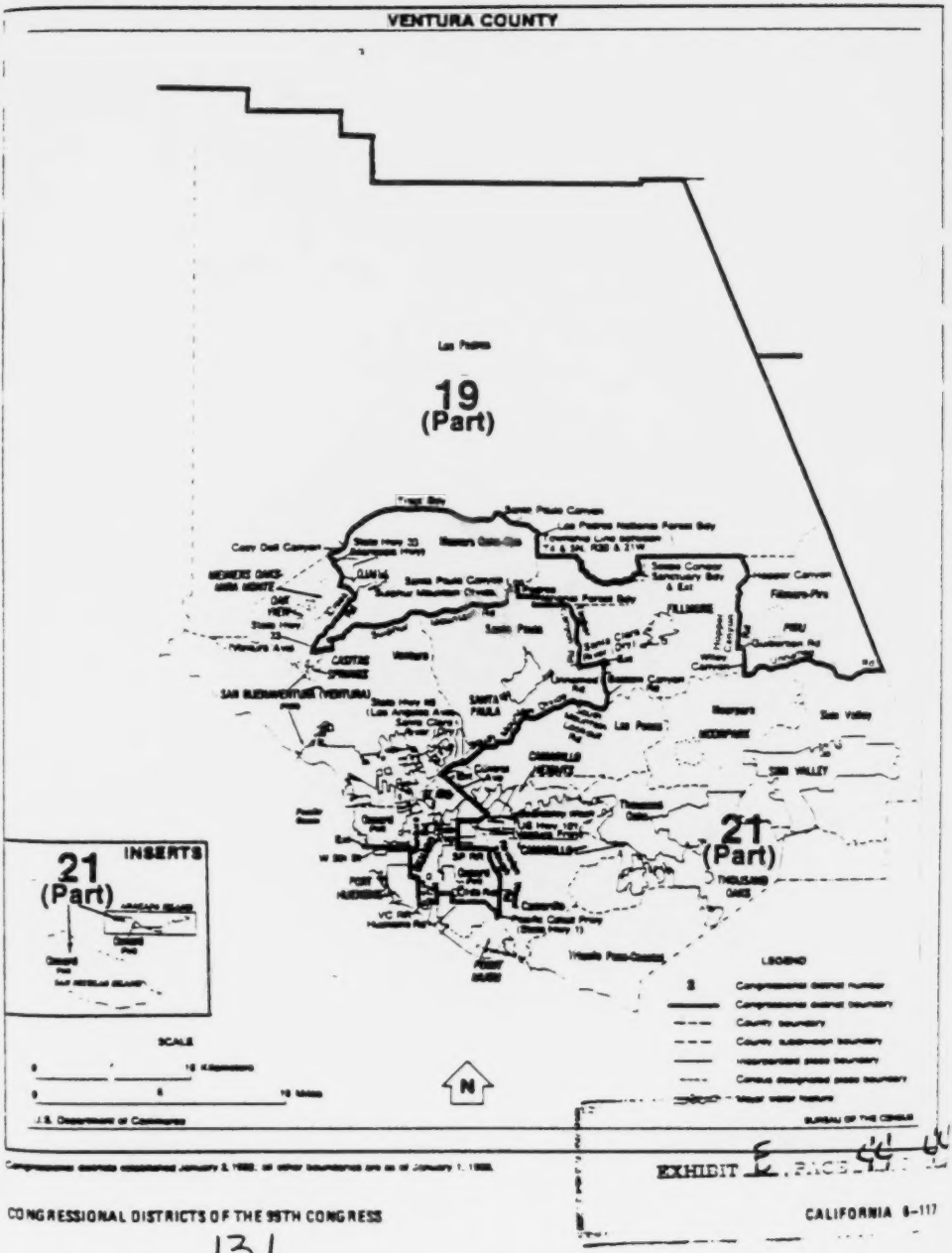
EXHIBIT E, PAGE 43 OF 44

CONGRESSIONAL DISTRICTS OF THE 98TH CONGR

I-116 CALIFORNIA

130

Congressional Districts, Counties, and Selected Places



131

EXHIBIT F

1983 CONGRESSIONAL DISTRICTS
14
15
3
4
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F 1 3.
132

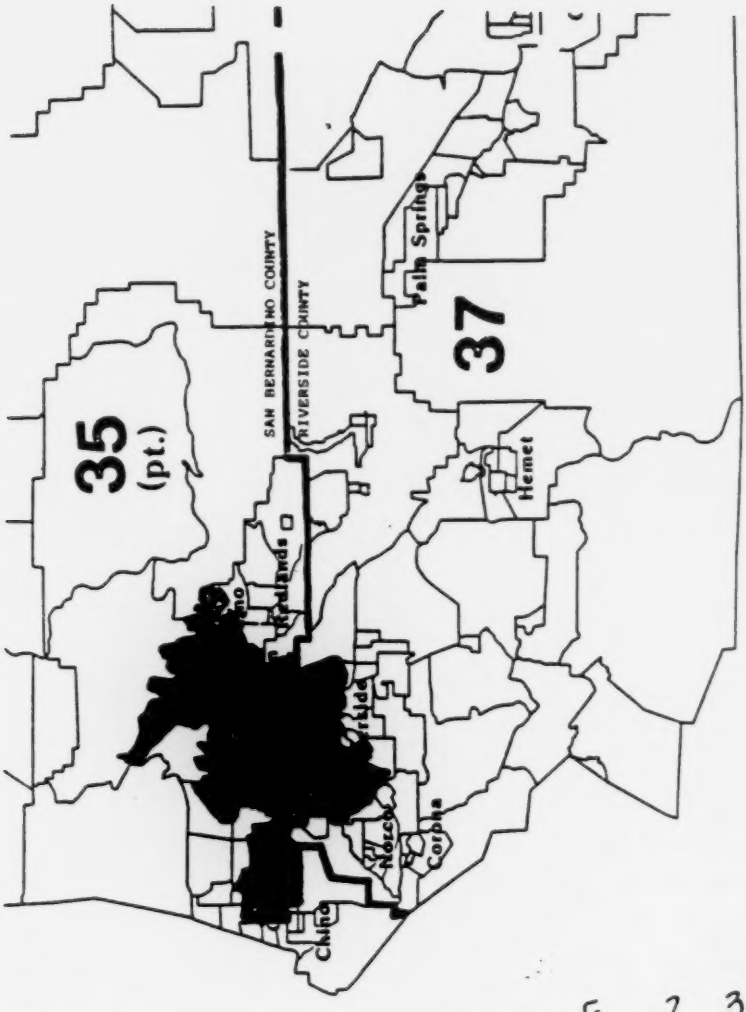
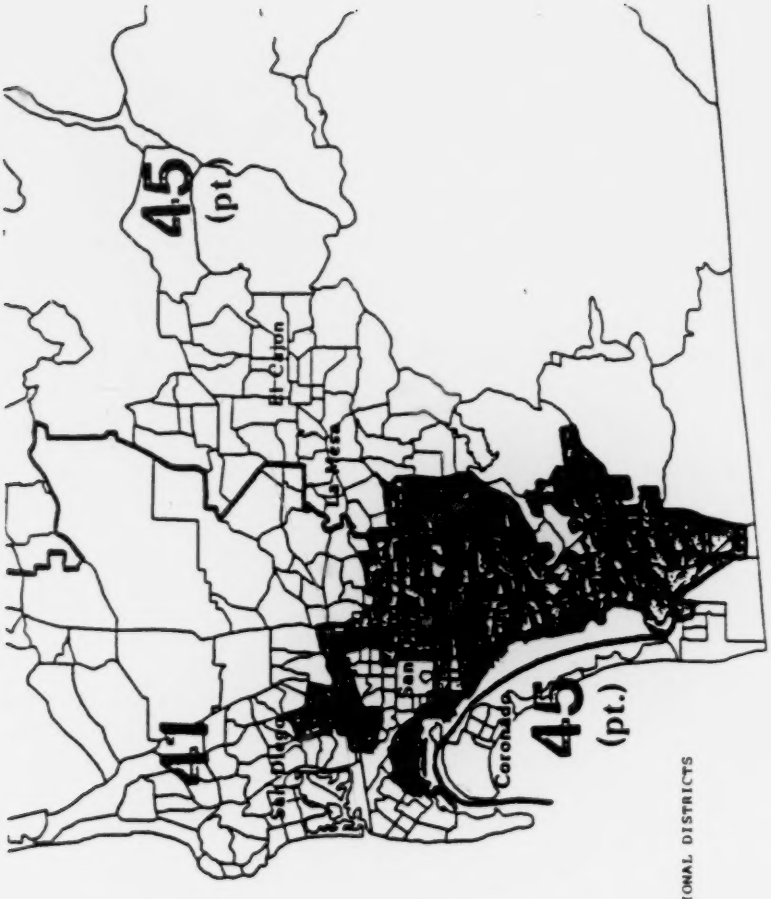


EXHIBIT 23

133

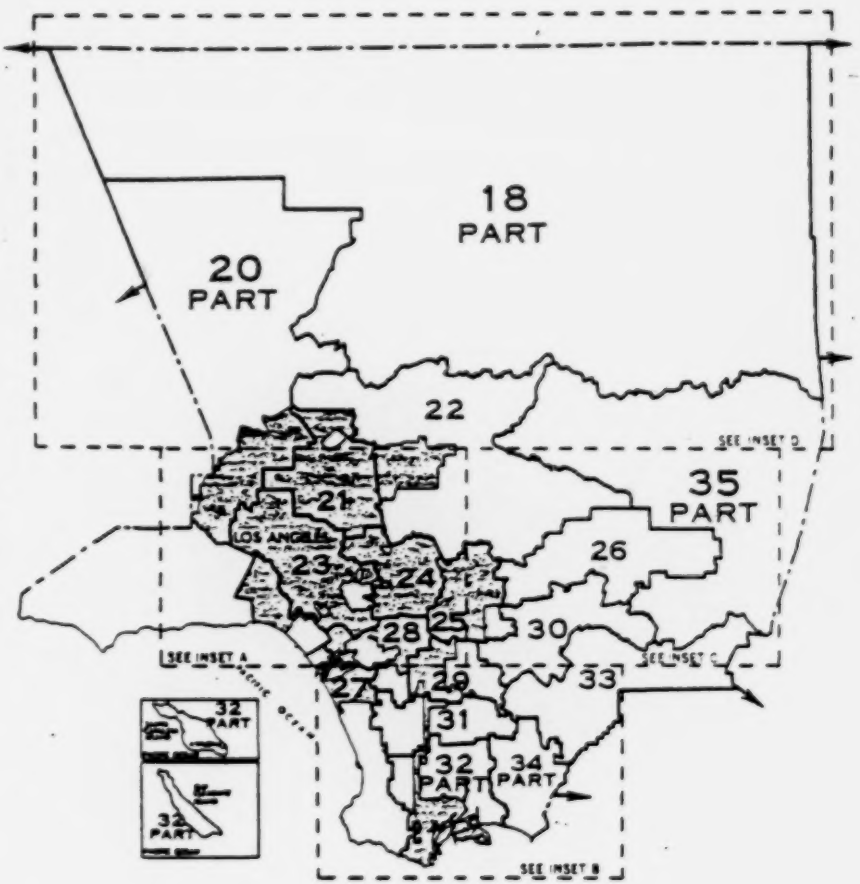

45
(pt)
El Cajon
La Mesa
San
41
San Diego
45
(pt.)
Coronado
1981 CONGRESSIONAL DISTRICTS

134 E 33

EXHIBIT G

CALIFORNIA
Districts Established November 28, 1973

LOS ANGELES COUNTY

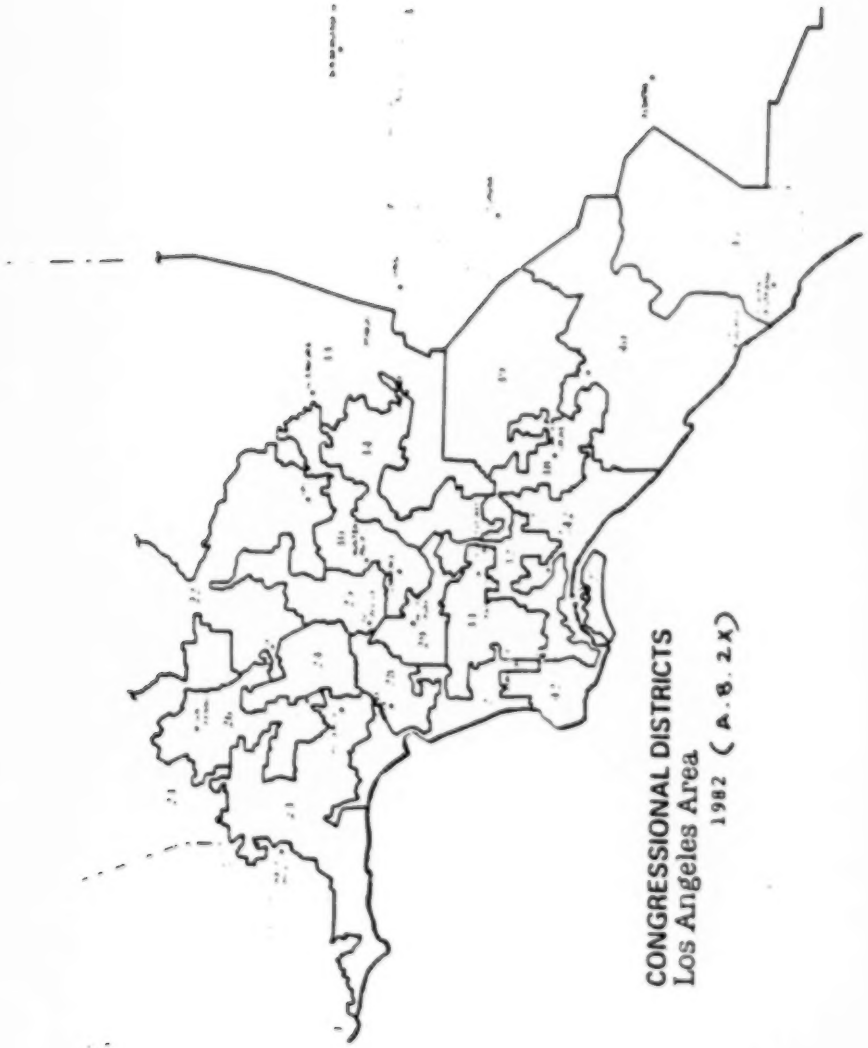


U.S. DEPARTMENT OF COMMERCE
BUREAU OF THE CENSUS

135

EXHIBIT 6, PAGE 1 OF 2

EXHIBIT



136

EXHIBIT 6, PAGE 2 OF

EXHIBIT H

EXHIBIT H

United States Representative in Congress

First Congressional District

County Name	Douglas H. Bosco (Dem.)	Don H. Clausen (Rep.-Inc.)	David Redick (Lib.)
Del Norte	2,749	3,244	163
Glenn	3,082	4,607	156
Humboldt	24,300	21,160	1,802
Mendocino	12,497	13,015	963
Sonoma	62,900	57,055	3,056
Trinity	2,221	2,962	234
District Totals	107,749	102,043	6,374
	49.9	47.2	2.9

Second Congressional District

County Name	Gene Chappie (Rep.-Inc.)	Howard Fegarsky (P. & F.)	John Newmeyer (Dem.)
Butte	36,040	931	24,254
Colusa	2,981	81	1,196
Lake	8,547	265	7,318
Napa	21,369	587	17,338
Shasta	19,715	436	15,226
Sutter	10,394	395	4,464
Tehama	9,503	201	6,572
Yuba	7,623	230	4,946
District Totals	116,172	3,126	81,314
	57.9	1.6	40.5

Third Congressional District

County Name	Bruce A. Daniel (Lib.)	Robert T. Matsui (Dem.-Inc.)	John C. Reiger (P. & F.)
Sacramento	16,222	194,680	6,294
	7.5	89.6	2.9

Fourth Congressional District

County Name	Roger B. Canfield (Rep.)	Vic Fazio (Dem.-Inc.)
Sacramento	36,535	58,307
Solano	17,933	28,978
Yolo	12,579	31,191
District Totals	67,047	118,476
	36.1	63.9

Fifth Congressional District

County Name	Phillip Burton (Dem.-Inc.)	Milton Marks (Rep.)	Justin Raimondo (Lib.)
San Francisco	103,268	72,139	2,904
	57.9	40.5	1.6

Sixth Congressional District

County Name	Timothy Allen Albertson (P. & F.)	Barbara Boxer (Dem.)	Howard C. Creighton (Lib.)	Dennis McQuaid (Rep.)
Marin	935	40,989	1,985	54,567
San Francisco	736	33,788	686	8,254
San Mateo	295	8,665	195	7,277
Solano	400	12,937	325	12,030
District Totals	2,366	96,379	3,191	82,128
	1.3	52.4	1.7	44.6

Seventh Congressional District

County Name	George Miller (Dem.-Inc.)	Rich Newell (Lib.)	Paul E. Vallely (Rep.)	Terry L. Wells (Am. Ind.)
Contra Costa	126,952	2,752	56,960	2,205
	67.1	1.5	30.2	1.2

Eighth Congressional District

County Name	Ronald V. Dellums (Dem.-Inc.)	Claude B. Hutchison Jr. (Rep.)
Alameda	104,918	51,228
Contra Costa	16,619	44,466
District Totals	121,537	95,694
	55.9	44.1

Ninth Congressional District

County Name	Bill Kennedy (Rep.)	Fortney H. (Pete) Stark (Dem.-Inc.)
Alameda	67,702	104,393
	39.3	60.7

Tenth Congressional District

County Name	Dale Burrow (Lib.)	Don Edwards (Dem.-Inc.)	Bob Herriott (Rep.)	Edmon V. Kaiser (Am. Ind.)
Alameda	892	28,757	20,819	1,063
Santa Clara	1,511	48,506	20,687	1,046
District Totals	2,403	77,263	41,506	2,109
	1.9	62.7	33.7	1.7

Eleventh Congressional District

County Name	Wilson Branch (P. & F.)	Nicholas W. Kudrovzeff (Am. Ind.)	Tom Lantos (Dem.-Inc.)	Chuck Olson (Lib.)	Bill Royer (Rep.)
San Mateo	1,572	1,135	90,860	2,273	66,957
Santa Clara	356	115	18,952	647	9,505
District Totals	1,928	1,250	109,812	2,920	76,462
	1.0	0.6	57.1	1.5	39.8

Twelfth Congressional District

County Name	Emmett Lynch (Dem.)	Bill White (Lib.)	Ed Zschau (Rep.)
San Mateo	6,863	787	19,874
Santa Clara	43,330	4,749	80,829
Stanislaus	11,179	935	14,662
District Totals	61,372	6,471	115,365
	33.5	3.5	63.0

Thirteenth Congressional District

County Name	Al Hinkle (Lib.)	Tom Kelly (Rep.)	Norman Y. Mineta (Dem.-Inc.)
Santa Clara	4,553	52,806	110,805
	2.7	31.4	65.9

Fourteenth Congressional District

County Name	Baron Reed (Dem.)	Norman D. Shumway (Rep.-Inc.)
Alpine	97	294
Amador	3,263	6,795
El Dorado	11,944	22,053
Lassen	3,198	4,426
Modoc	995	2,536
Nevada	9,660	15,543
Placer	20,780	28,400
Plumas	2,656	4,041
San Joaquin	13,901	33,737
Shasta	3,747	6,078
Sierra	831	937
Siskiyou	6,328	9,385
District Totals	77,400	134,225
	36.6	63.4

Fifteenth Congressional District

County Name	Ed Bates (Rep.)	Tony Coelho (Dem.-Inc.)	Stephen L. Gerringer (Lib.)
Fresno	14,551	22,046	677
Madera	7,916	9,279	396
Mariposa	1,930	3,545	156
Merced	7,909	22,309	659
Stanislaus	13,642	28,843	1,185
District Totals	45,948	86,022	3,073
	34.0	63.7	2.3

Sixteenth Congressional District

County Name	G. Richard Arnold (Rep.)	Leon E. Panetta (Dem.-Inc.)
Monterey	10,370	64,687
San Benito	1,210	5,714
San Luis Obispo	3,018	7,457
Santa Cruz	9,850	64,772
District Totals	24,448	142,630
	14.6	85.4

Seventeenth Congressional District

County Name	Charles Pashayan, Jr. (Rep.-Inc.)	Gene Tackett (Dem.)
Fresno	25,278	14,607
Kern	7,535	15,470
Kings	10,098	7,922
Tulare	37,360	30,365
District Totals	80,271	68,364
	54.0	46.0

Eighteenth Congressional District

County Name	Adrian Fondse (Rep.)	Marshall William Fritz (Lib.)	Richard Lehman (Dem.)
Calaveras	4,588	277	3,789
Fresno	19,155	1,681	49,885
Mono	1,630	72	1,264
San Joaquin	26,939	1,183	30,798
Tuolumne	7,352	288	7,026
District Totals	59,664	3,501	92,762
	38.3	2.2	59.5

Nineteenth Congressional District

County Name	Frank Frost (Dem.)	R. C. Gordon-McCutchan (Lib.)	Robert J. "Bob" Lagomarsino (Rep.-Inc.)	Charles J. Zekan (P. & F.)
Santa Barbara	40,195	2,781		715
Ventura	25,847	1,417	70,299	805
District Totals	66,042	4,198	42,187	1,520
	35.8	2.3	112,486	0.8
			61.1	

Twentieth Congressional District

County Name	Robert J. Bethea (Dem.)	William M. Thomas (Rep.-Inc.)
Kern	30,957	69,905
Los Angeles	8,772	22,225
San Luis Obispo	18,040	31,182
District Totals	57,769	123,312
	31.9	68.1

Twenty-first Congressional District

County Name	Bobbi Fiedler (Rep.-Inc.)	George Henry Margolis (Dem.)	Daniel Wiener (Lib.)
Los Angeles	63,930	21,931	3,015
Ventura	74,544	24,481	4,866
District Totals	138,474	46,412	7,881
	71.8	24.1	4.1

Twenty-second Congressional District

County Name	Robert T. Gerringer (Lib.)	Harvey L. Goldhammer (Dem.)	Carlos J. Moorhead (Rep.-Inc.)
Los Angeles	5,870	46,521	145,831
	3.0	23.5	73.5

Twenty-third Congressional District

County Name	David Armor (Rep.)	Anthony C. Beilenson (Dem.-Inc.)
Los Angeles	82,031	120,788
	40.4	59.6

Twenty-fourth Congressional District

County Name	Jeff Mandel (Lib.)	Henry A. Waxman (Dem.-Inc.)	Jerry Zerg (Rep.)
Los Angeles	5,420	88,516	42,133
	4.0	65.0	31.0

Twenty-fifth Congressional District

County Name	Daniel John Gorham (Lib.)	Edward R. Roybal (Dem.-Inc.)
Los Angeles	12,060	71,106
	14.5	85.5

Twenty-sixth Congressional District

County Name	Howard L. Berman (Dem.)	Hal Phillips (Rep.)
Los Angeles	97,383	66,072
	59.6	40.4

Twenty-seventh Congressional District

County Name	Bart W. Christensen (Rep.)	Mel Levine (Dem.)	Zack Richardson (Lib.)
Los Angeles	67,479	108,347	6,391
	37.0	59.5	3.5

Twenty-eighth Congressional District

County Name	Julian C. Dixon (Dem.-Inc.)	David Gorez (Rep.)	David W. Meleney (Lib.)
Los Angeles	103,469	24,473	3,210
	78.9	18.7	2.4

Twenty-ninth Congressional District

County Name	Augustus F. (Gus) Hawkins (Dem.-Inc.)	Milton R. Mackaig (Rep.)
Los Angeles	97,028	24,568
	79.8	20.2

Thirtieth Congressional District

County Name	Matthew G. Martinez (Dem.-Inc.)	John H. Rousselot (Rep.)
Los Angeles	60,905	52,177
	53.9	46.1

Thirty-first Congressional District

County Name	Mervyn M. Dymally (Dem.-Inc.)	Henry C. Minturn (Rep.)
Los Angeles	86,718	33,043
	72.4	27.6

Thirty-second Congressional District

County Name	Glenn M. Anderson (Dem.-Inc.)	Brian Lungren (Rep.)	Eugene E. Ruyle (P. & F.)
Los Angeles	84,663	57,863	3,473
	58.0	39.6	2.4

Thirty-third Congressional District

County Name	David Dreier (Rep.)	Phillips B. Franklin (Lib.)	James Michael Noonan (P. & F.)	Paul Servelle (Dem.)
Los Angeles	112,362	2,251	2,223	55,514
	65.2	1.3	1.3	32.2

Thirty-fourth Congressional District

County Name	Paul R. Jackson (Rep.)	Esteban Ed Torres (Dem.)
Los Angeles	51,026	68,316
	42.8	57.2

Thirty-fifth Congressional District

County Name	Robert E. Erwin (Dem.)	Jerry Lewis (Rep.-Inc.)
Inyo	2,313	5,220
Los Angeles	408	515
San Bernardino	49,628	107,051
District Totals	52,349	112,786
	31.7	68.3

Thirty-sixth Congressional District

County Name	George E. Brown, Jr. (Dem.-Inc.)	John Paul Stark (Rep.)
Riverside	21,835	16,447
San Bernardino	54,711	47,914
District Totals	76,546	64,361
	54.3	45.7

Thirty-seventh Congressional District

County Name	Curtis R. "Sam" Cross (Dem.)	Al McCandless (Rep.)	Marc R. Wruble (Lib.)
Riverside	68,510	105,065	4,297
	38.5	59.1	2.4

Thirty-eighth Congressional District

County Name	Anita K. Barr (Lib.)	William F. (Bill) Dohr (Rep.)	Jerry M. Patterson (Dem.-Inc.)
Orange	5,989	61,279	73,914
	4.2	43.4	52.4

Thirty-ninth Congressional District

County Name	Frank Boeheim (P. & F.)	William E. (Bill) Dannemeyer (Rep.-Inc.)	Frank G. Verges (Dem.)
Orange	3,152	129,539	46,681
	1.8	72.2	26.0

Fortieth Congressional District

County Name	Robert E. Badham (Rep.-Inc.)	Paul Haseman (Dem.)	Maxine Bell Quirk (P. & F.)
Orange	144,228	52,546	4,826
	71.5	26.1	2.4

Forty-first Congressional District

County Name	Tony Brandenburg (Dem.)	Everett Hale (Lib.)	Bill Lowery (Rep.-Inc.)
San Diego	58,677	4,654	140,130
	28.8	2.3	68.9

Forty-second Congressional District

County Name	John S. Donohue (P. & F.)	Dan Lungren (Rep.-Inc.)	James P. Spellman (Dem.)
Los Angeles	3,320	88,735	36,438
Orange	2,194	54,110	22,252
District Totals	5,514	142,845	58,690
	2.7	69.0	28.3

Forty-third Congressional District

County Name	Roy "Pat" Archer (Dem.)	Johnnie R. Crean (Rep.)	Ron Packard (Rep. write-in)
Orange	17,229	22,936	15,927
San Diego	40,766	33,361	50,517
District Totals	57,995	56,297	66,444
	32.1	31.1	36.8

Forty-fourth Congressional District

County Name	Jim Bates (Dem.)	Jim Conole (Lib.)	Shirley M. Gissendanner (Rep.)
San Diego	78,474	3,904	38,447
	65.0	3.2	31.8

Forty-fifth Congressional District

County Name	Richard Hill (Dem.)	Duncan Hunter (Rep.-Inc.)	Jack R. Sanders (Lib.)
Imperial	7,485	11,717	460
San Diego	42,663	106,054	3,379
District Totals	50,148	117,771	3,839
	29.2	68.6	2.2

EXHIBIT I

EXHIBIT I

United States Representative in Congress

First Congressional District

	Douglas H Bosco (Dem-Inc)	David Redick (Rep)
Del Norte	4,432	2,550
Humboldt	35,801	15,787
Lake	10,857	7,506
Mendocino	19,131	11,029
Napa	16,686	14,234
Sonoma	70,130	44,080
District Totals	157,037	95,186
	62.3%	37.7%

Second Congressional District

	Gene Chappie (Rep-Inc)	Harry Cozad (Dem)
Butte	45,142	24,262
Colusa	4,102	1,038
Glenn	6,422	2,045
Lake	706	379
Napa	10,397	4,280
Nevada	3,553	1,353
Shasta	35,878	14,240
Siskiyou	11,392	5,902
Sutter	14,512	3,899
Tehama	11,929	5,538
Trinity	4,043	2,072
Yuba	10,603	4,785
District Totals	158,679	69,793
	69.5%	30.5%

Third Congressional District

	Robert T Matsui (Dem-Inc)
Sacramento	131,369
	100%

Fourth Congressional District

	Vic Fazio (Dem-Inc)	Roger Canfield (Rep)	Roger Conant Pope (Lib)
Sacramento	58,495	39,811	2,150
Solano	37,048	23,102	983
Yolo	34,566	14,860	906
District Totals	130,109	77,773	4,039
	61.4%	36.7%	1.9%

Fifth Congressional District

	Sala Burton (Dem-Inc)	Tom Spinosa (Rep)	Joseph Fuhrig (Lib)	Henry Clark (P&F)
San Francisco	139,692	45,930	4,008	3,574
	72.3%	23.8%	2.1%	1.8%

Sixth Congressional District

	Barbara Boxer	Douglas Binderup (Rep)	Howard Creighton (Lib)
Marin	70,480	40,446	3,195
San Francisco	48,457	10,905	1,085
Solano	22,456	8,063	541
Sonoma	21,118	11,597	753
District Totals	162,511	71,011	5,574
	68%	29.7%	2.3%

Seventh Congressional District

	George Miller (Dem-Inc)	Rosemary Thakar (Rep)
Contra Costa	158,306	78,985
	66.7%	33.3%

Eighth Congressional District

	Ronald V Dellums (Dem-Inc)	Charles Connor (Rep)
Alameda	119,755	46,574
Contra Costa	24,561	48,333
District Totals	144,316	94,907
	60.3%	39.7%

Ninth Congressional District

	Fortney Peter Stark (Dem-Inc)	J T Eager Beaver (Rep)	Martha Fuhrig (Lib)
Alameda	136,511	51,399	7,398
	69.9%	26.3%	3.8%

Tenth Congressional District

	Don Edwards (Dem-Inc)	Robert P Herriott (Rep)	Perr Cardestam (Lib)	Edmon V Kaiser (A-I)
Alameda	38,304	27,104	1,038	989
Santa Clara	64,165	29,152	1,751	1,674
District Totals	102,469	56,256	2,789	2,663
	62.4%	34.3%	1.7%	1.6%

Eleventh Congressional District

	Tom Lantos (Dem-Inc)	John J 'Jack' Hickey (Rep)	Nicholas W Kudrovzeff (A-I)
San Mateo	147,607	59,625	3,883
	69.9%	28.3%	1.8%

Twelfth Congressional District

	Ed Zschau (Rep-Inc)	Martin Carnoy (Dem)	Bill White (Lib)
San Mateo	23,430	9,699	757
Santa Clara	121,900	74,269	4,398
Santa Cruz	10,465	7,058	717
District Totals	155,795	91,026	5,872
	61.7%	36.0%	2.3%

Thirteenth Congressional District

	Norman Y Mineta (Dem-Inc)	John D 'Jack' Williams (Rep)	John R Redding (Lib)
Santa Clara	139,851	70,666	3,836
	65.2%	33%	1.8%

Fourteenth Congressional District

	Norm Shumway (Rep-Inc)	Ruth 'Paula' Carlson (Dem)	Fred W Colburn (Lib)
Alpine	303	128	20
Amador	8,096	2,283	246
El Dorado	31,513	9,415	931
Lassen	6,194	2,164	192
Modoc	3,241	822	90
Nevada	18,257	6,753	965
Placer	41,550	14,598	2,598
Plumas	5,614	2,221	234
San Joaquin	63,305	19,404	1,521
Sierra	1,165	596	53
District Totals	179,238	58,384	6,850
	73.3%	23.9%	2.8%

Fifteenth Congressional District

	Tony Coelho (Dem-Inc)	Carol Harner (Rep)	Richard M Harris (Lib)
Fresno	20,164	9,092	553
Mariposa	3,678	2,615	172
Merced	27,364	11,418	832
Stanislaus	58,384	31,605	1,529
District Totals	109,590	54,730	3,086
	65.5%	32.7%	1.8%

Sixteenth Congressional District

	Leon E Panetta (Dem-Inc)	Patricia Smith Ramsey (Rep)	Bill Anderson (Lib)
Monterey	71,786	26,988	1,227
San Benito	5,372	3,329	217
San Luis Obispo	19,344	11,763	547
Santa Cruz	56,875	17,985	1,254
District Totals	153,377	60,065	3,245
	70.8%	27.7%	1.5%

Seventeenth Congressional District

	Charles 'Chip' Pashayan (Rep-Inc)	Simon Lakritz (Dem)
Fresno	50,369	14,040
Kern	9,233	8,139
Kings	13,746	7,292
Tulare	55,454	19,417
District Totals	128,802	48,888
	72.5%	27.5

Eighteenth Congressional District

	Richard H Lehman (Dem-Inc)	Dale L Ewen (Rep)
Calaveras	6,201	5,516
Fresno	66,294	25,471
Madera	11,076	8,423
Mono	1,835	1,729
San Joaquin	32,652	14,070
Tuolumne	10,128	7,130
District Totals	128,186	62,339
	67.3%	32.7%

Nineteenth Congressional District

	Robert J 'Bob' Lagomarsino (Rep-Inc)	James C Carey Jr (Dem)	Charles John Zekan (P&F)
Santa Barbara	96,204	43,183	2,472
Ventura	56,983	27,095	1,689
District Totals	153,187	70,278	4,161
	67.3%	30.9%	1.8%

Twentieth Congressional District

	William M Thomas (Rep-Inc)	Mike LeSage (Dem)
Inyo	5,749	2,202
Kern	90,708	37,278
Los Angeles	26,417	7,407
San Luis Obispo	28,858	15,420
District Totals	151,732	62,307
	70.9%	29.1%

Twenty-first Congressional District

	Bobbi Fiedler (Rep-Inc)	Charles 'Charlie' Davis (Dem)	Robert T Leet (Lib)
Los Angeles	78,695	25,171	1,805
Ventura	94,809	36,914	2,574
District Totals	173,504	62,085	4,379
	72.3%	25.9%	1.8%

Twenty-second Congressional District

	Carlos J Moorhead (Rep-Inc)	Michael B Yauch (Lib)
Los Angeles	184,981	32,036
	85.2%	14.8%

Twenty-third Congressional District

	Anthony C Beilenson (Dem-Inc)	Claude Parrish (Rep)	Larry Leathers (Lib)
Los Angeles	140,461	84,093	3,580
	61.6%	36.9%	1.5%

Twenty-fourth Congressional District

	Henry A Waxman (Dem-Inc)	Jerry Zerg (Rep)	James Green (P&F)	Tim Custer (Lib)
Los Angeles	97,340	51,010	2,780	2,477
	63.4%	33.2%	1.8%	1.6%

Twenty-fifth Congressional District

	Edward R Roybal (Dem-Inc)	Roy D 'Bill' Bloxom (Rep)	Anthony G Bajada (Lib)
Los Angeles	74,261	24,968	4,370
	71.7%	24.1%	4.2%

Twenty-sixth Congressional District

	Howard L Berman (Dem-Inc)	Miriam Ojeda (Rep)
Los Angeles	117,080	69,372
	62.8%	37.2%

Twenty-seventh Congressional District

	Mel Levine (Dem-Inc)	Robert B Scribner (Rep)	Thomas L O'Connor Jr (P&F)	Jeff Avrech (Lib)
Los Angeles	116,933	88,896	3,815	3,137
	54.9%	41.8%	1.8%	1.5%

Twenty-eighth Congressional District

	Julian C Dixon (Dem-Inc)	Beatrice M Jett (Rep)	Don 'Swemgi-murti' Federick (Lib)
Los Angeles	113,076	33,511	2,930
	75.6%	22.4%	2%

Twenty-ninth Congressional District

	Augustus F 'Gus' Hawkins (Dem-Inc)	Echo Y Goto (Rep)
Los Angeles	108,777	16,781
	86.6%	13.4%

Thirtieth Congressional District

	Matthew G 'Marty' Martinez (Dem-Inc)	Richard Gomez (Rep)	Houston A Myers (A-I)
Los Angeles	64,378	53,900	6,055
	51.8%	43.3%	4.9%

Thirty-first Congressional District

	Mervyn M Dymally (Dem-Inc)	Henry C Minturn (Rep)
Los Angeles	100,658	41,691
	70.7%	29.3%

Thirty-second Congressional District

	Glenn M Anderson (Dem-Inc)	Roger E Fiola (Rep)	Marc F Denny (Lib)	Patrick J McCoy (P&F)
Los Angeles	102,961	62,176	2,517	2,051
	60.7%	36.6%	1.5%	1.2%

Thirty-third Congressional District

	David Dreier (Rep-Inc)	Claire K McDonald (Dem)	Gail Lightfoot (Lib)	Mike Noonan (P&F)
Los Angeles	147,363	54,147	4,738	2,371
	70.6%	26%	2.3%	1.1%

Thirty-fourth Congressional District

	Esteban E Torres (Dem-Inc)	Paul R Jackson (Rep)
Los Angeles	87,060	58,467
	59.8%	40.2%

Thirty-fifth Congressional District

	Jerry Lewis (Rep-Inc)	Kevin Akin (P&F)
Los Angeles	7,172	1,669
San Bernardino	169,305	28,321
District Totals	176,477	29,990
	85.5%	14.5%

Thirty-sixth Congressional District

	George E Brown Jr (Dem-Inc)	John Paul Stark (Rep)
Riverside	29,798	21,858
San Bernardino	74,640	58,354
District Totals	104,438	80,212
	56.6%	43.4%

Thirty-seventh Congressional District

	Al McCandless (Rep-Inc)	David E 'Dave' Skinner (Dem)
Riverside	149,955	85,908
	63.6%	36.4%

Thirty-eighth Congressional District

	Robert K 'Bob' Dornan (Rep)	Jerry M Patterson (Dem-Inc)	Michael Schuyles Bright (P&F)
Los Angeles	9,641	8,162	274
Orange	76,904	65,069	2,747
District Totals	86,545	73,231	3,021
	53.2%	45%	1.8%

Thirty-ninth Congressional District

	William E 'Bill' Dannemeyer (Rep-Inc)	Robert E Ward (Dem)
Orange	175,788	54,889
	76.2%	23.8%

Fortieth Congressional District

	Robert E Badham (Rep-Inc)	Carol Ann Bradford (Dem)	Maxine Bell Quirk (P&F)
Orange	164,257	86,748	3,969
	64.4%	34%	1.6%

Forty-first Congressional District

	Bill Lowery (Rep-Inc)	Bob Simmons (Dem)	Sara Baase (Lib)
San Diego	161,068	85,475	7,303
	63.4%	33.7%	2.9%

Forty-second Congressional District

	Dan Lungren (Rep-Inc)	Mary Lou Brophy (Dem)	John S Donohue (P&F)
Los Angeles	92,812	30,690	2,850
Orange	84,971	29,335	2,961
District Totals	177,783	60,025	5,811
	73%	24.6%	2.4%

Forty-third Congressional District

	Ron Packard (Rep-Inc)	Lois E Humphreys (Dem)	Phyllis Avery (Lib)
Orange	58,065	14,670	2,034
San Diego	107,578	36,326	4,844
District Totals	165,643	50,996	6,878
	74.1%	22.8%	3.1%

Forty-fourth Congressional District

	Jim Bates (Dem-Inc)	Neill Campbell (Rep)	Jim Conole (Lib)
San Diego	99,378	39,977	3,206
	69.7%	28%	2.3%

Forty-fifth Congressional District

	Duncan Hunter (Rep-Inc)	David W Guthrie (Dem)	Patrick Wright (Lib)
Imperial	14,992	7,220	370
San Diego	134,019	38,105	3,601
Total	149,011	45,325	3,971
	75.1%	22.9%	2%

APPENDIX E

NIELSEN, HODGSON,
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Attorneys for Plaintiffs

RECEIVED
DEC 22, 1986

WILLIAM L. WHITTAKER
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT E. BADHAM, ROBERT NAYLOR, ERIC SEASTRAND, ALDO SILVESTRI, MICHAEL W. COBB, FRANK O. VERLOT, DONNA S. RICHARDSON, PETER SCHRAGER, JANE BAKER, CHARLES A. MEYER, KIRK LINDSEY, DONALD DRISCOLL, ROGER T. ERICKSON, D.D.S.,	No. C-83-1126RHS THREE-JUDGE COURT ORDER GRANTING PLAINTIFFS' MOTION TO FILE AMENDMENT TO COMPLAINT TO ADD PARTIES PLAINTIFF AND ORDERING FILING OF OFFICIAL CANVASS OF THE VOTE
Plaintiffs,	
vs.	

MARCH FONG EU, Secretary of State of the State of California	)
Defendant,	)
ASSEMBLY OF THE STATE OF CALIFORNIA, THE CALIFORNIA DEMOCRATIC CONGRESSIONAL DELEGATION,	)
Intervenors.	)

This matter having come for hearing on December 5, 1986, on the motion of plaintiffs to file an amendment to their Third Amended Complaint by adding parties plaintiff, the Court having considered the brief and other documents filed in support of the motion, there being no opposition to the amendment, and being fully advised,

IT IS ORDERED THAT plaintiffs' motion be and the same hereby is granted, and that plaintiffs' file their amendment to add additional plaintiffs.

Dated: Jan. 13, 1987

/s/ ROBERT H. SCHNACKE
ROBERT H. SCHNACKE
United States District Judge

APPENDIX F

NIELSEN, HODGSON,
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UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERT E. BADHAM, ROBERT NAYLOR, ERIC SEASTRAND, ALDO SILVESTRI, MICHAEL W. COBB, FRANK O. VERLOT, DONNA S. RICHARDSON, PETER SCHRAGER, JANE BAKER, CHARLES A. MEYER, KIRK LINDSEY, DONALD DRISCOLL, ROGER T. ERICKSON, D.D.S.,	No. C-83-1126RHS THREE-JUDGE COURT
Plaintiffs,	AMENDMENT TO THIRD AMENDED COMPLAINT
vs.	
MARCH FONG EU, Secretary of State of the State of California,	
Defendant,	

ASSEMBLY OF THE STATE OF CALIFORNIA, THE CALIFORNIA DEMOCRATIC CONGRESSIONAL DELEGATION,	)
Intervenors.	)

Plaintiffs amend their Third Amended Complaint as follows:

1. Plaintiffs insert the following names in the caption as plaintiffs: CYNTHIA TROBITZ-THOMAS; WALLY HERGER; LOWELL LANDOWSKI; JACK HITE; MIKE GARZA; DENNIS McQUAID; ROSEMARY THAKAR; STEVE EIGENBERG; DAVID WILLIAMS; MICHAEL LaCRONE; BOB NASH; NORMAN SHUMWAY; CHIP PASHAYAN; DAVID CREVELT; ROBERT LAGOMARSINO; BILL THOMAS; ELTON GALLEGLY; CARLOS MOORHEAD; GEORGE WOOLVERTON; JERRY ZERG; DAVID BAIRD; ROBERT KERNS; ROBERT SCRIBNER; GEORGE ADAMS; CARL JOHNSON; JOHN W. ALMQUIST; JACKSON M. McMURRAY; JOYCE ROBERTSON; DAVID DREIER; CHARLES HOUSE; JERRY LEWIS; BOB HENLEY; AL McCANDLESS; ROBERT DORNAN; WILLIAM DANNEMEYER; BOB BADHAM; BILL LOWERY; DAN LUNGREN; RON PACKARD; BILL MITCHELL and DUNCAN HUNTER.

2. Plaintiffs insert the following language after the words "16th Congressional District" appearing in paragraph 1 on page 2, line 28: "Plaintiffs Shumway, Pashayan, Lagomarsino, Thomas, Moorhead, Dreier, Lewis, McCandless, Dornan, Dannemeyer, Lowery, Lungren, Packard and Hunter are members of the California Republican Congressional Delegation and residents and registered Republican voters of the State of California. Plaintiffs Trobitz-Thomas, Herger, Landowski, Hite, Garza, McQuaid, Thakar, Eigenberg, Williams, LaCrone, Nash, Crevelt, Gallegly, Woolverton, Zerg, Baird, Kerns, Scrib-

ner, Adams, Johnson, Almquist, McMurray, Robertson, House, Henley, and Mitchell are registered Republican voters and residents of the State of California. At least one plaintiff votes in each of California's 45 Congressional Districts."

DATED: December 22, 1986

NIELSEN, HODGSON,
PARRINELLO & MUELLER

By /s/ JAMES R. PARRINELLO
JAMES R. PARRINELLO
Attorneys for Plaintiffs

APPENDIX G

Official Canvass of the Vote

November 4, 1986

General Election

Compiled by

MARCH FONG EU

Secretary of State

Summary of Votes Cast for Offices and Measures

Governor	
Bradley,Dem	2,781,714
Deukmejian,Rep-Inc	4,506,601
Miller,AI	50,547
Fuhrig,Lib	52,628
Munoz,P&F	51,995

Lieutenant Governor	
McCarthyDem-Inc	3,957,831
Curb,Rep	3,118,758
Griffin,AI	104,480
Almodovar,Lib	90,157
Kuhn,P&F	66,898

Secretary of State	
Eu,Dem-Inc	3,673,432
Nestande,Rep	3,149,359
Dietrich,AI	72,607
Winger,Lib	141,955
Garcia,P&F	97,808

Controller	
Davis,Dem	3,673,432
Campbell,Rep	3,149,359
Kudrovzeff,AI	72,607
Treynor,Lib	141,955
Haag,P&F	97,808

Treasurer	
Unruh,Dem-Inc	5,589,633
Short,AI	357,182
Cullen,Lib	569,280
Smith,P&F	240,451

Attorney General	
Van de Kamp,Dem-Inc	4,691,142
Gleason,Rep	2,118,627
Odom,AI	81,262
Newman,Lib	128,906
Evans,P&F	88,739

Equalization, 1st District	
Bennett,Dem-Inc	1,062,676
Prat,Rep	745,649
Novak,P&F	89,051

Equalization, 2nd District	
Collis,Dem-Inc	918,090
Parrish,Rep	724,618
Lovato,P&F	65,167

Equalization, 3rd District	
Buckley,Dem	591,281
Dronenburg,Rep-Inc	1,025,565
Sanders,Lib	57,532
Quirk,P&F	38,229

Equalization, 4th District	
Carpenter,Dem	797,399
Jones,Rep	514,848
Malmberg,Lib	37,312
McCammon,P&F	38,993

United States Senator	
Cranston,Dem-Inc	3,646,672
Zschau,Rep	3,541,804
Vallen,AI	109,856
McKinley,Lib	66,261
Kangas,P&F	33,869

Congress, 1st District	
Bosco,Dem-Inc	138,174
Sampson,Rep	54,436
McFarland,P&F	12,149

Congress, 2nd District	
Swendiman,Dem	74,602
Herger,Rep	109,758
Pendery,Lib	4,054

Congress, 3rd District	
Matsui,Dem-Inc	158,709
Landowski,Rep	50,265

Congress, 4th District	
Fazio,Dem-Inc	128,364
Hite,Rep	54,596

Congress, 5th District	
Burton,Dem-Inc	122,688
Garza,Rep	36,039
Grove,Lib	2,409
Zuur,P&F	2,078

Congress, 6th District	
Boxer,Dem-Inc	142,946
Ernst,Rep	50,606

Congress, 7th District	
Miller,Dem-Inc	124,174
Thakar,Rep	62,379

Congress, 8th District	
Dellums,Dem-Inc	121,790
Eigenberg,Rep	76,850
Manuel,P&F	4,295

Congress, 9th District	
Stark,Dem-Inc	113,490
Williams,Rep	49,300

Congress, 10th District	
Edwards,Dem-Inc	84,240
La Crone,Rep	31,826
Cardestam,Lib	1,797
Mayer,P&F	1,701

Congress, 11th District	
Lantos,Dem-Inc	112,380
Quraishi,Rep	39,315

Congress, 12th District	
Weil,Dem	69,564
Konnyu,Rep	111,252
White,Lib	6,227

Congress, 13th District	
Mineta,Dem-Inc	107,696
Nash,Rep	46,754
Congress, 14th District	
Steele,Dem	53,597
Shumway,Rep-Inc	146,906
Daniel,Lib	4,658
Congress, 15th District	
Coelho,Dem-Inc	93,600
Harner,Rep	35,793
Harris,Lib	2,382
Congress, 16th District	
Panetta,Dem-Inc	128,151
Darrigo,Rep	31,386
Anderson,Lib	1,944
Wright,P&F	2,017
Congress, 17th District	
Hartnett,Dem	58,682
Pashayan,Rep-Inc	88,787
Congress, 18th District	
Lehman,Dem-Inc	101,480
Crevelt,Rep	40,907
Congress, 19th District	
Norris,Dem	45,619
Lagomarsino,Rep-Inc	122,578
Hasara,Lib	2,341
Congress, 20th District	
Moquin,Dem	49,027
Thomas,Rep-Inc	129,989
Congress,21st District	
Saldana,Dem	54,497
Gallegly,Rep	132,090
Wiener,Lib	6,504
Congress, 22nd District	
Simmons,Dem	44,036
Moorhead,Rep-Inc	141,096
Bergland,Lib	3,114
Lorimer,P&F	2,930
Congress, 23rd District	
Beilenson,Dem-Inc	121,468
Woolverton,Rep	58,746
Rhodes,Lib	2,019
Hopke,P&F	2,521
Congress, 24th District	
Waxman,Dem-Inc	103,914
Abrahams,Lib	8,871
Green,P&F	5,388
Congress, 25th District	
Roybal,Dem-Inc	62,692
Hardy,Rep	17,558
Brown,Lib	2,163
Congress, 26th District	
Berman,Dem-Inc	98,091
Kerns,Rep	52,662
Congress, 27th District	
Levine,Dem-Inc	110,403
Scribner,Rep	59,410
Leathers,Lib	1,429
O'Connor,P&F	2,078
Congress, 28th District	
Dixon,Dem-Inc	92,635
Adams,Rep	25,858
Johnson,Lib	2,837
Congress, 29th District	
Hawkins,Dem-Inc	78,132
Van de Brooke,Rep	13,432
Boctor,Lib	851

Congress, 30th District

Martinez,Dem-Inc	59,369
Almquist,Rep	33,705
Goldsworthy,Lib	1,911

Congress, 31st District

Dymally,Dem-Inc	77,126
McMurray,Rep	30,322
Duren,P&F	2,333

Congress, 32nd District

Anderson,Dem-Inc	90,739
Robertson,Rep	39,003
Donohue,P&F	2,799

Congress, 33rd District

Hempel,Dem	44,312
Dreier,Rep-Inc	118,541
Noonan,P&F	2,500

Congress, 34th District

Torres,Dem-Inc	66,404
House,Rep	43,659

Congress, 35th District

Hall,Dem	38,322
Lewis,Rep-Inc	127,235

Congress, 36th District

Brown,Dem-Inc	78,118
Henley,Rep	58,660

Congress,37th District

Skinner,Dem	69,808
McCandless,Rep-Inc	122,416

Congress, 38th District

Robinson,Dem	50,625
Dornan,Rep-Inc	66,032
Connelly,Lib	2,807

Congress, 39th District

Vest,Dem	42,377
Dannemeyer,Rep-Inc	131,603
Boeheim,P&F	2,752

Congress 40th District

Sumner,Dem	75,664
Badham,Rep-Inc	119,829
Sears,P&F	5,025

Congress, 41st District

Kripke,Dem	59,816
Lowery,Rep-Inc	133,566
Rider,Lib	3,541

Congress 42nd District

Blackburn,Dem	47,586
Lungren,Rep-Inc	140,364
McClatchy,P&F	4,761

Congress, 43rd District

Chirra,Dem	45,078
Packard,Rep-Inc	137,341
Avery,Lib	5,370

Congress 44th District

Bates,Dem-Inc	70,557
Mitchell,Rep	36,359
Thompson,Lib	1,244
Isaacson,P&F	1,676

Congress, 45th District

Ryan,Dem	32,800
Hunter,Rep-Inc	118,900
Schwartz,Lib	2,975

Senate, 2nd District

Keene,Dem-Inc	115,756
Brann,Rep	84,580
Elizondo,P&F	5,497

Senate, 4th District

Cibula,Dem	82,733
Nielsen,Rep-Inc	150,060

Senate, 6th District

Greene,Dem-Inc	138,571
Smoley,Rep	90,759

United States Representative in Congress

First Congressional District

County	Douglas H Bosco Dem-Inc	Floyd G Sampson Rep	Elden McFarland P&F
Del Norte	4,587	1,513	220
Humboldt	29,047	9,217	2,225
Lake	9,618	4,838	347
Mendocino	14,953	6,597	2,405
Napa	15,217	8,940	644
Sonoma	64,752	23,331	6,308
District Totals	138,174	54,436	12,149

Second Congressional District

County	Stephen C 'Steve' Swendiman Dem	Wally Herger Rep	Harry Hugh Pendery Lib
Butte	21,676	33,061	1,556
Colusa	1,288	3,264	46
Glenn	2,347	4,575	114
Lake	369	561	23
Napa	4,482	7,077	240
Nevada	1,233	3,253	133
Shasta	19,687	20,761	817
Siskiyou	6,939	8,055	245
Sutter	4,287	10,340	256
Tehama	5,967	8,392	256
Trinity	2,544	2,785	159
Yuba	3,783	7,634	209
District Totals	74,602	109,758	4,054

Third Congressional District

County	Robert T Matsui Dem-Inc	Lowell Landowski Rep
Sacaramento	158,709	50,265

Fourth Congressional District

County	Vic Fazio Dem-Inc	Jack D Hite Rep
Sacramento	62,721	29,123
Solano	34,173	15,051
Yolo	31,470	10,422
District Totals	128,364	54,596

Fifth Congressional District

County	Sala Burton Dem-Inc	Mike Garza Rep	Samuel K Grove Lib	Theodore 'Ted' Zuur P&F
San Francisco	122,688	36,039	2,409	2,078

Sixth Congressional District

County	Barbara Boxer Dem-Inc	Franklin 'Harry' Ernst III Rep
Marin	61,090	29,069
San Francisco	45,354	7,202
Solano	17,119	6,043
Sonoma	19,383	8,292
District Totals	142,946	50,606

Seventh Congressional District

County	George Miller Dem-Inc	Rosemary Thakar Rep
Contra Costa	124,174	62,379

Eighth Congressional District

County	Ronald V Dellums Dem-Inc	Steven Eigenberg Rep	Lawrence R Manuel P&F
Alameda	102,528	38,012	3,247
Contra Costa	19,262	38,838	1,048
District Totals	121,790	76,850	4,295

Ninth Congressional District

County	Fortney Pete Stark Dem-Inc	David M Williams Rep
Alameda	113,490	49,300

Tenth Congressional District

County	Don Edwards Dem-Inc	Michael R La Crone Rep	Perr Cardestam Lib	Bradley L Mayer P&F
Alameda	34,863	15,639	629	585
Santa Clara	49,377	16,187	1,168	1,116
District Totals	84,240	31,826	1,797	1,701

Eleventh Congressional District

County	Tom Lantos Dem-Inc	G M 'Bill' Quraishi Rep
San Mateo	112,380	39,315

Twelfth Congressional District

County	Lance T Weil Dem	Ernest L Konnyu Rep	Bill White Lib
San Mateo	8,244	16,629	845
Santa Clara	55,952	86,813	4,697
Santa Cruz	5,368	7,810	685
District Totals	69,564	111,252	6,227

Thirteenth Congressional District

County	Norman Y Mineta Dem-Inc	Bob Nash Rep
Santa Clara	107,696	46,754

Fourteenth Congressional District

County	Bill Steele Dem	Norm Shumway Rep-Inc	Bruce A Daniel Lib
Alpine	123	289	8
Amador	2,465	7,107	148
El Dorado	8,249	25,936	663
Lassen	2,435	4,851	109
Modoc	947	2,488	81
Nevada	5,343	16,293	891
Placer	14,103	33,948	1,801
Plumas	1,738	4,442	148
San Joaquin	17,706	50,536	774

Fifteenth Congressional District

County	Tony Coelho Dem-Inc	Carol Harner Rep	Richard M Harris Lib
Fresno	16,327	6,797	392
Mariposa	3,291	1,984	140
Merced	21,276	6,742	573
Stanislaus	52,706	20,270	1,277
District Totals	93,600	35,793	2,382

Sixteenth Congressional District

County	Leon E Panetta Dem-Inc	Louis Darrigo Rep	Bill Anderson Lib	Ron Wright P&F
Monterey	57,420	14,096	691	618
San Benito	5,192	1,833	126	214
San Luis Obispo	17,520	6,037	317	259
Santa Cruz	48,019	9,420	810	926
District Totals	128,151	31,386	1,944	2,017

Seventeenth Congressional District

County	John Hartnett Dem	Charles 'Chip' Pashayan Rep-Inc
Fresno	20,484	34,407
Kern	6,790	7,152
Kings	7,231	10,344
Tulare	24,177	36,884
District Totals	58,682	88,787

Eighteenth Congressional District

County	Richard H Lehman Dem-Inc	David C Crevelt Rep
Calaveras	6,685	3,939
Fresno	48,007	16,765
Madera	9,190	5,423
Mono	1,438	1,028
San Joaquin	25,974	8,905
Tuolumne	10,186	4,847
District Totals	101,480	40,907

Nineteenth Congressional District

County	Wayne B Norris Dem	Robert J 'Bob' Lagomarsino Rep-Inc	George Hasara Lib
Santa Barbara	28,277	76,388	1,339
Ventura	17,342	46,190	1,002
District Totals	45,619	122,578	2,341

Twentieth Congressional District

County	Jules H Moquin Dem	William M Thomas Rep-Inc
Inyo	1,727	4,773
Kern	30,158	79,508
Los Angeles	6,230	20,381
San Luis Obispo	10,912	25,327
District Totals	49,027	129,989

Twenty-first Congressional District

County	Gilbert R Saldana Dem	Elton Gallegly Rep	Daniel Wiener Lib
Los Angeles	25,452	56,249	3,213
Ventura	29,045	75,841	3,291
District Totals	54,497	132,090	6,504

Twenty-second Congressional District

County	John G Simmons Dem	Carlos J Moorhead Rep-Inc	Jona Joy Bergland Lib	Joel Lorimer P&F
Los Angeles	44,036	141,096	3,114	2,930

Twenty-third Congressional District

County	Anthony C Beilenson Dem-Dem	George Woolverton Rep	Taylor Rhodes Lib	Tom Hopke P&F
Los Angeles	121,468	58,746	2,019	2,521

Twenty-fourth Congressional District

County	Henry A Waxman Dem-Inc	George Abrahams Lib	James Green P&F
Los Angeles	103,914	8,871	5,388

Twenty-fifth Congressional District

County	Edward R Roybal Dem-Inc	Gregory L Hardy Rep	Ted Brown Lib
Los Angeles	62,692	17,558	2,163

Twenty-sixth Congressional District

County	Howard L Berman Dem-Inc	Robert M Kerns Rep
Los Angeles	98,091	52,662

Twenty-seventh Congressional District

County	Mel Levine Dem-Inc	Rob Scribner Rep	Larry Leathers Lib	Thomas L O'Connor Jr P&F
Los Angeles	110,403	59,410	1,429	2,078

Twenty-eighth Congressional District

County	Julian C Dixon Dem-Inc	George Adams Rep	Howard Johnson Lib
Los Angeles	92,635	25,858	2,837

Twenty-ninth Congressional District

County	Augustus F 'Gus' Hawkins Dem-Inc	John Van de Brooke Rep	Waheed Boctor Lib
Los Angeles	78,132	13,432	851

Thirtieth Congressional District

County	Matthew G 'Marty' Martinez Dem-Inc	John W Almquist Rep	Kim J Goldsworthy Lib
Los Angeles	59,369	33,705	1,911

Thirty-first Congressional District

County	Mervyn M Dymally Dem-Inc	Jack McMurray Rep	B Kwaku Duren P&F
Los Angeles	77,126	30,322	2,333

Thirty-second Congressional District

County	Glenn M Anderson Dem-Inc	Joyce M Robertson Rep	John S Donohue P&F
Los Angeles	90,739	39,003	2,799

Thirty-third Congressional District

County	Monty Hempel Dem	David Dreier Rep-Inc	Mike Noonan P&F
Los Angeles	44,312	118,541	2,500

Thirty-fourth Congressional District

County	Esteban E Torres Dem-Inc	Charles M House Rep
Los Angeles	66,404	43,659

Thirty-fifth Congressional District

County	R 'Sarge' Hall Dem	Jerry Lewis Rep-Inc
Los Angeles	2,365	5,389
San Bernardino	35,957	121,846
District Totals	38,322	127,235

Thirty-sixth Congressional District

County	George E Brown Jr Dem	Bob Henley Rep-Inc
Riverside	23,161	15,879
San Bernardino	54,957	42,781
District Totals	78,118	58,660

Thirty-seventh Congressional District

County	David E 'Dave' Skinner Dem	Al McCandless Rep-Inc
Riverside	69,808	122,416

Thirty-eighth Congessional District

County	Richard Robinson Dem	Robert K 'Bob' Dornan Rep-Inc	Lee Connelly Lib
Los Angeles	5,928	8,762	292
Orange	44,697	57,270	2,515

Thirty-ninth Congressional District

County	David D Vest Dem	William E 'Bill' Dannemeyer Rep-Inc	Frank Boeheim P&F
Orange	42,377	131,603	2,752

Fortieth Congressional District

County	Bruce W Sumner Dem	Robert E Badham Rep-Inc	Steve Sears P&F
Orange	75,664	119,829	5,025

Forty-first Congressional District

County	Dan Kripke Dem	Bill Lowery Rep-Inc	Dick Rider Lib
San Diego	59,816	133,566	3,541

Forty-second Congressional District

County	Michael P Blackburn Dem	Daniel E Lungren Rep-Inc	Kate McClatchy P&F
Los Angeles	24,714	76,202	2,517
Orange	22,872	64,162	2,244
District Totals	47,586	140,364	4,761

Forty-third Congressional District

County	Joseph Chirra Dem	Ron Packard Rep-Inc	Phyllis Avery Lib
Orange	12,089	45,454	1,753
San Diego	32,989	91,887	3,617
District Totals	45,078	137,341	5,370

Forty-fourth Congressional District

County	Jim Bates Dem-Inc	Bill Mitchell Rep	Dennis Thompson Lib	Shirley Isaacson P&F
San Diego	70,557	36,359	1,244	1,676

Forty-fifth Congressional District

County	Hewitt Fitts Ryan Dem	Duncan Hunter Rep-Inc	Lee Schwartz Lib
Imperial	5,187	12,905	446
San Diego	27,613	105,995	2,529
Total	32,800	118,900	2,975

Supreme Court, U.S.
FILED
MAY 13 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1818

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ROBERT E. BADHAM, *et al.*,

Appellants,

v.

MARCH FONG EU, *et al.*,

Appellees.

Appeal from the United States District Court for the Northern District of California

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SUPPLEMENTAL APPENDIX TO JURISDICTIONAL STATEMENT

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May 4, 1988

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

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Assembly Bill No. 2

CHAPTER 6

An act to amend Sections 10212 of, and to repeal and add Chapter 4 (commencing with Section 30030) and Chapter 5 (commencing with Section 30040) of Division 18 of, the Elections Code, relating to elections.

[Approved by Governor January 2, 1983. Filed with Secretary of State January 2, 1983.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2, as amended, Alatorre. Elections.

Existing law prescribes a procedure which is used to determine the candidate who is entitled to be designated the incumbent candidate at the first election for Congressmen, Assemblymen, and Senators following the enactment of redistricting statutes.

This bill would include elections of candidates seeking office to the Board of Equalization within the above procedure.

The California Constitution directs the Legislature, in the year following the year in which the national decennial census is taken, to adjust the boundary lines of senatorial, Assembly, congressional and Board of Equalization districts.

This bill would adjust the boundary lines of all Board of Equalization districts.

It would also provide that the districts specified in the bill would become effective on the effective date of the act and that this provision would be severable in the event that it is held invalid.

The people of the State of California do enact as follows:

SECTION 1. Section 10212 of the Elections Code is amended to read:

10212. At the first elections for Representative in Congress, State Senator, Assemblyman and Members of the Board of Equalization in each congressional, senatorial, Assembly, and Board of Equalization district following reapportionment acts of the Legislature redefining the boundaries of the congressional, senatorial, Assembly, and Board of Equalization districts pursuant to Section 6 of Article IV, Section 17 of Article XIII, and Section 1 of Article XXI of the Constitution, that candidate who shall be deemed the incumbent in a given district for purposes of the election shall be:

(a) That candidate who is running for the same office which he then holds and who is running for reelection in a district which has the identical boundaries and number as the district from which he was last elected.

(b) In the event there is no candidate to whom the provisions of subdivision (a) apply, the incumbent shall be that candidate who is running for the same office which he then holds and who is running for reelection in a district which has the identical boundaries as the district from which he was last elected, but which has a different number.

(c) In the event there is no candidate to whom the provisions of subdivision (a) or (b) apply, the incumbent shall be that candidate who is running for the same office which he then holds and who is running for reelection in a district which has the identical number as the district from which he was last elected; provided, however, that a candidate for the office of Member of the Assembly shall be considered the incumbent in such case only if the district bearing the same number is located in the same county as the district which previously bore that number.

(d) In the event there is no candidate to whom the provisions of subdivision (a), (b), or (c) apply, the incumbent shall be that candidate who is running for the same office which he then holds and who is running for reelection in a district which contains some portion of the territory

previously contained within the district from which he was last elected; provided, that in a new district which contains portions of the territory of more than one former district the incumbent shall be that candidate the greater portion of the territory of whose former district is included within the new district.

If there is no candidate in a given district to which any of the above provisions apply, the incumbent shall be any person who is a candidate for the same office which he then holds who fulfills the residential requirements of law for candidacy within the district.

SEC.2. Chapter 4 (commencing with Section 30030) of Division 18 of the Elections Code is repealed.

SEC.3. Chapter 4 (commencing with Section 30030) is added to Division 18 of the Elections Code, to read:

CHAPTER 4. CONGRESSIONAL DISTRICTS

30030. It is the intent of the Legislature in the enactment of this chapter to implement the United States constitutional mandate as set forth in Section 2 of Article I and the provisions of Article XXI of the California Constitution.

30031. For purposes of this chapter, references to "CT" shall mean "census tract", and references to "Ed" or "Eds" shall mean "enumeration district" or "enumeration districts", respectively, as those demographic units are established by the United States Bureau of the Census for the 1980 census as described by maps and publications of the bureau.

References to "Block Group" and "Blocks", respectively, shall mean those demographic units as established by the United States Bureau of the Census for the 1980 census as described by maps and publications of the Bureau.

In addition, and for purposes of this chapter, references to "city boundaries", "city limits", or "boundaries of the

town", respectively, shall refer to the boudnaries or limits of the particular city or town as they existed on April 1, 1980, except as is otherwise expressly provided. Reference to a city or town shall refer to the particular incorporated municipality provided for herein.

30032. Congressional District 1: Congressional District 1 shall consist of the following whole counties:

Del Norte
Humboldt
Mendocino

together with the part of Napa County contained in the following whole and partial census tracts:

Whole Census Tracts:
CT 2001
CT 2002
CT 2003
CT 2004
CT 2005
CT 2006
CT 2007
CT 2008
CT 2009
CT 2010
CT 2011

Partial Census Tract:
CT 2012, block 399
CT 2013, portions in City of Yountville except blocks 201, 202, and 299

together with the part of Sonoma County not contained in Congressional District 6, together with the part of Lake County not contained in Congressional District 2.

Congressional District 2: Congressional District 2 shall consist of the following whole counties:

Butte
Colusa
Glenn
Shasta

Siskiyou
Sutter
Tehama
Trinity
Yuba

together with the part of Nevada County contained in the following whole and partial census tracts:

Whole Census Tracts:
CT 4
Partial Census Tracts:
CT 9—Ed 0568 and Ed 0569

together with the part of Lake County contained in the following whole enumeration districts:

ED 102
ED 116
ED 117
ED 118

together with the part of Napa County not contained in Congressional District 1.

Congressional District 3: Congressional District 3 shall consist of the part of Sacramento County contained in the following whole and partial census tracts:

Whole Census Tracts:
CT 1
CT 2
CT 3
CT 4
CT 5
CT 6
CT 7
CT 8
CT 9
CT 10
CT 11
CT 12
CT 13
CT 14

CT 15
CT 16
CT 17
CT 18
CT 19
CT 20
CT 21
CT 22
CT 23
CT 24
CT 25
CT 26
CT 27
CT 28
CT 29
CT 30
CT 31.01
CT 31.02
CT 32.01
CT 32.02
CT 33
CT 34
CT 35.01
CT 35.02
CT 36
CT 37
CT 38
CT 39
CT 40.01
CT 40.02
CT 40.03
CT 41
CT 42.01
CT 42.02
CT 42.03
CT 43
CT 44.01

CT 44.02
CT 45
CT 46.01
CT 46.02
CT 47
CT 48
CT 49.01
CT 49.02
CT 50
CT 51
CT 52.01
CT 52.02
CT 52.03
CT 53
CT 54.01
CT 54.02
CT 55.03
CT 55.04
CT 56.01
CT 56.02
CT 57.01
CT 57.02
CT 58.01
CT 58.02
CT 59.02
CT 76
CT 77
CT 78
CT 79.01
CT 79.02
CT 80.01
CT 80.03
CT 80.04
CT 81.05
CT 81.08
CT 82.04
CT 82.05

CT 86
CT 87
CT 88
CT 89.03
CT 89.04
CT 89.05
CT 89.06
CT 90
CT 91.01
CT 91.02
CT 91.03
CT 91.04
CT 92
CT 93.01
CT 93.02
Partial Census Tracts:
CT 59.01—Blocks 101, 115, 121, 122, and 123.
CT 81.06—Block Groups 1 and 2.
CT 96—Portions in the City of Sacramento.

Congressional District 4: Congressional District 4 shall consist of Yolo County, together with the part of Sacramento County not contained in Congressional District 3, together with the part of Solano County contained in the following whole and partial census tracts:
Whole Census Tracts:
CT 2520
CT 2521.02
CT 2521.99
CT 2522
CT 2523.01
CT 2523.02
CT 2523.03
CT 2523.04
CT 2524.01
CT 2524.02
CT 2525.01
CT 2525.02

CT 2526.04
CT 2526.05
CT 2526.06
CT 2526.07
CT 2526.08
CT 2526.09
CT 2527.01
CT 2527.02
CT 2528
CT 2529.02
CT 2529.03
CT 2529.04
CT 2529.05
CT 2530
CT 2531.01
CT 2531.02
CT 2531.03
CT 2532.01
CT 2532.02
CT 2532.03
CT 2533
CT 2534
CT 2535

Partial Census Tracts:

CT 2501.02—That portion not in the City of Vallejo.

CT 2504—That portion not in the City of Vallejo.

CT 2505.01—The incorporated portions of block 120 and the remainder of tract not in the City of Vallejo.

CT 2505.02—The incorporated portions of block 114 and the remainder of tract not in the City of Vallejo.

CT 2506.01—The incorporated portions of block 107 and the remainder of tract not in the City of Vallejo.

CT 2506.02—That portion not in the City of Vallejo.

CT 2507.01—That portion not in the City of Vallejo.

CT 2507.02—That portion not in the City of Vallejo.

CT 2511—That portion not in the City of Vallejo.

CT 2521.01—That portion not in the City of Vallejo.

Congressional District 5: Congressional District 5 shall consist of all of the City and County of San Francisco not contained in Congressional District 6.

Congressional District 6: Congressional District 6 shall consist of the following whole county:

Marin

together with the part of the City and County of San Francisco contained in the following whole and partial census tracts:

Whole Census Tracts:

CT 133
CT 152
CT 153
CT 154
CT 155
CT 156
CT 157
CT 158
CT 159
CT 161
CT 162
CT 163
CT 164
CT 165
CT 166
CT 167
CT 168
CT 169
CT 170
CT 171
CT 401
CT 402
CT 426
CT 427
CT 428
CT 451
CT 452

CT 476
CT 477
CT 478
CT 479
CT 601
CT 602
CT 603
Partial Census Tracts:
CT 160—All except blocks 101 and 102.
together with the part of Sonoma County contained in the following whole and partial census tracts:
Whole Census Tracts:
CT 1501
CT 1503.01
CT 1506.01
CT 1506.02
CT 1506.03
CT 1506.04
CT 1507
CT 1508
CT 1509
CT 1510
CT 1511
Partial Census Tracts:
CT 1502—Sonoma City portion excluding Ed 108B.
CT 1512.01—Portions not in the City of Rohnert Park.
CT 1512.02—Portions not in the City of Rohnert Park.
CT 1513.04—Portions not in the City of Rohnert Park, and excluding unincorporated blocks 301, 302, 303, 304, 305, 306, and 307.
together with the part of Solano County not contained in whole and partial census tracts including those tracts designating population on vessels which are not contained in Congressional District 4.

Congressional District 7: Congressional District 7 shall consist of the part of Contra Costa County contained in the following whole and partial census tracts:

Whole Census Tracts:
CT 3010
CT 3020
CT 3031
CT 3032
CT 3040
CT 3050
CT 3060
CT 3071
CT 3072.01
CT 3072.02
CT 3072.03
CT 3080
CT 3090
CT 3100
CT 3110
CT 3120
CT 3131.01
CT 3131.02
CT 3131.03
CT 3132.01
CT 3132.02
CT 3141
CT 3142
CT 3142.99
CT 3150
CT 3150.99
CT 3160
CT 3170
CT 3180
CT 3190
CT 3200.01
CT 3200.02
CT 3200.99
CT 3211.01
CT 3211.02
CT 3211.03

CT 3212
CT 3220
CT 3230
CT 3240
CT 3250
CT 3260
CT 3270
CT 3280
CT 3290
CT 3300
CT 3310
CT 3320
CT 3331
CT 3332
CT 3340.01
CT 3340.02
CT 3340.03
CT 3350
CT 3361
CT 3362
CT 3371
CT 3372
CT 3373
CT 3381
CT 3382.01
CT 3382.02
CT 3383.01
CT 3383.02
CT 3390
CT 3400.01
CT 3420
CT 3430.01
CT 3430.02
CT 3430.03
CT 3461.01
CT 3461.02
CT 3462.02

CT 3511
CT 3551.01
CT 3551.02
CT 3551.03
CT 3552
CT 3553.01
CT 3553.02
CT 3553.03
CT 3553.04
CT 3553.05
CT 3560.01
CT 3560.02
CT 3570
CT 3580
CT 3580.99
CT 3591.01
CT 3591.02
CT 3592.01
CT 3592.02
CT 3601
CT 3602
CT 3620
CT 3630
CT 3640.01
CT 3640.02
CT 3650.01
CT 3650.02
CT 3660
CT 3671
CT 3672
CT 3680
CT 3690
CT 3700
CT 3710
CT 3720
CT 3730
CT 3740

CT 3750
CT 3760
CT 3770
CT 3780
CT 3780.99
CT 3790
CT 3800
CT 3800.99
CT 3810
CT 3820
CT 3830

Partial Census Tracts:

CT 3400.02—All except that portion in the City of Lafayette.

CT 3410—Portions in the City of Walnut Creek and the unincorporated portions of blocks 102, 104, 105, and 314.

CT 3451.06—That portion contained in Block Group 9.

CT 3462.01—All except Block Group 2.

CT 3470—That portion in the City of Martinez and the City of Pleasant Hill.

CT 3610—All except that portion in the City of El Cerrito.

Congressional District 8: Congressional District 8 shall consist of the part of Contra Costa County not contained in Congressional District 7, including those tracts designating population on vessels that are not contained in Congressonal District 7, together with the part of Alameda County contained in the following whole and partial census tracts:

Whole Census Tracts:

CT 4001
CT 4002
CT 4003
CT 4004
CT 4005
CT 4006
CT 4007

CT 4008
CT 4009
CT 4010
CT 4011
CT 4012
CT 4013
CT 4014
CT 4015
CT 4016
CT 4017
CT 4017.99
CT 4018
CT 4019
CT 4019.99
CT 4020
CT 4021
CT 4022
CT 4023
CT 4024
CT 4025
CT 4026
CT 4027
CT 4028
CT 4029
CT 4030
CT 4031
CT 4032
CT 4032.99
CT 4033
CT 4034
CT 4035
CT 4036
CT 4037
CT 4038
CT 4039
CT 4040
CT 4041

CT 4042
CT 4043
CT 4044
CT 4045
CT 4046
CT 4047
CT 4048
CT 4049
CT 4050
CT 4051
CT 4052
CT 4053
CT 4054
CT 4055
CT 4056
CT 4057
CT 4058
CT 4059
CT 4060
CT 4061
CT 4062
CT 4063
CT 4064
CT 4065
CT 4067
CT 4068
CT 4069
CT 4073
CT 4078
CT 4079
CT 4080
CT 4081
CT 4088
CT 4089
CT 4091
CT 4092
CT 4093

CT 4094
CT 4095
CT 4096
CT 4102
CT 4103
CT 4104
CT 4201
CT 4202
CT 4203
CT 4204
CT 4205
CT 4206
CT 4211
CT 4212
CT 4213
CT 4214
CT 4215
CT 4216
CT 4217
CT 4218
CT 4219
CT 4220
CT 4221
CT 4222
CT 4223
CT 4224
CT 4225
CT 4226
CT 4227
CT 4228
CT 4229
CT 4230
CT 4231
CT 4232
CT 4233
CT 4234
CT 4235

CT 4236
CT 4237
CT 4238
CT 4239
CT 4240
CT 4251
CT 4261
CT 4262

Partial Census Tracts:

CT 4066—All except blocks 203, 204, and 205 and Block Group 1 excluding blocks 101, 102, 103, 104, and 105.

CT 4090—That portion east of Doolittle Drive.

Congressional District 9: Congressional District 9 shall consist of the part of Alameda County contained in the following whole and partial census tracts:

Whole Census Tracts:

CT 4070
CT 4071
CT 4072
CT 4074
CT 4075
CT 4076
CT 4077
CT 4082
CT 4083
CT 4084
CT 4085
CT 4086
CT 4087
CT 4097
CT 4098
CT 4099
CT 4100
CT 4101
CT 4271
CT 4272
CT 4272.99

CT 4273
CT 4273.99
CT 4274
CT 4274.99
CT 4275
CT 4275.99
CT 4276
CT 4277
CT 4278
CT 4279
CT 4280
CT 4281
CT 4282
CT 4283
CT 4284
CT 4285
CT 4286
CT 4301
CT 4302
CT 4303
CT 4304
CT 4305
CT 4306
CT 4307
CT 4308
CT 4309
CT 4310
CT 4311
CT 4312
CT 4321
CT 4322
CT 4323
CT 4324
CT 4325
CT 4326
CT 4327
CT 4328

CT 4329
CT 4330
CT 4331
CT 4332
CT 4333
CT 4334
CT 4335
CT 4336
CT 4337
CT 4338
CT 4339
CT 4340
CT 4351
CT 4352
CT 4353
CT 4354
CT 4355
CT 4356
CT 4357
CT 4358
CT 4359
CT 4360
CT 4361
CT 4362
CT 4363
CT 4364
CT 4365
CT 4366
CT 4367
CT 4368
CT 4369
CT 4370
CT 4371
CT 4372
CT 4373
CT 4374
CT 4375

CT 4376
CT 4377
CT 4378
CT 4379
CT 4380
CT 4381
CT 4382
CT 4383
CT 4384
CT 4402
CT 4403.01
CT 4403.02
CT 4403.03
CT 4403.05
CT 4501
CT 4502
CT 4503
CT 4504
CT 4505
CT 4506.01
CT 4506.02
CT 4506.03
CT 4506.04
CT 4506.05
CT 4506.06
CT 4506.07
CT 4507.01
CT 4507.02
CT 4507.03
CT 4507.04
CT 4511
CT 4512
CT 4513
CT 4514
CT 4515
CT 4516
CT 4517

Partial Census Tracts:

CT 4066—That portion not contained in Congressional District 8.

CT 4090—That portion west of Doolittle Drive.

CT 4403.04—Blocks 303, 305, 307, 308, 309, and 310.

Congressional District 10: Congressional District 10 shall consist of the part of Alameda County not contained in Congressional District 8 and Congressional District 9, together with the part of Santa Clara County contained in the following whole and partial census tracts:

Whole Census Tracts:

CT 5001
CT 5002
CT 5003
CT 5004
CT 5005
CT 5006
CT 5007
CT 5008
CT 5009
CT 5010
CT 5011
CT 5012
CT 5013
CT 5014
CT 5015
CT 5016
CT 5017
CT 5018
CT 5019
CT 5031.01
CT 5031.02
CT 5031.03
CT 5031.04
CT 5032.03
CT 5032.04
CT 5032.05

CT 5033.04
CT 5033.05
CT 5033.06
CT 5033.07
CT 5034
CT 5035.02
CT 5035.03
CT 5035.04
CT 5035.05
CT 5036.01
CT 5036.02
CT 5037.02
CT 5037.03
CT 5037.04
CT 5037.05
CT 5038.01
CT 5038.02
CT 5039
CT 5040
CT 5041
CT 5042
CT 5043.03
CT 5043.04
CT 5043.05
CT 5043.06
CT 5043.07
CT 5043.08
CT 5044.02
CT 5044.06
CT 5044.07
CT 5044.08
CT 5044.09
CT 5044.10
CT 5044.11
CT 5045.01
CT 5045.03
CT 5049.02

CT 5050.02
CT 5051
Partial Census Tracts:
CT 5020—Excluding that part south of Scott Street and west of Leland Avenue.
CT 5033.08—Portions east of White Road and blocks 311, 312, 313, and 314.
CT 5046.02—All except portions in the cities of Sunnyvale and Santa Clara.

Congressional District 11: Congressional District 11 shall consist of the part of San Mateo County not included in Congressional District 12.

Congressional District 12: Congressional District 12 shall consist of the part of San Mateo County contained in the following whole and partial census tracts:
Whole Census Tracts:
CT 6056
CT 6057
CT 6114
CT 6115
CT 6124
CT 6125
CT 6126
CT 6127
CT 6128
CT 6129
CT 6130
CT 6131
CT 6132
CT 6133
CT 6134
CT 6138
Partial Census Tracts:
CT 6050—All except portions in the City of Burlingame.
CT 6068—That unincorporated portion of Block Group 1 and block 916.

CT 6069—All except portions in the City of San Mateo.
CT 6122—Blocks 508, 510, 511, and 512.
CT 6135—Ed 1 and blocks 911, 912, 913, and 914 and the unincorporated portion of block 910.
CT 6137—All except portions in the City of Half Moon Bay, together with the part of Santa Cruz County contained in the following whole and partial census tracts:
Whole Census Tracts:
CT 1203
CT 1204
CT 1205
CT 1206
CT 1209
CT 1210
Partial Census Tracts:
CT 1202—Eds 541 and 543.
CT 1212—Portions in the City of Scotts Valley.
together with the part of Santa Clara County not contained in Congressional Districts 10 and 13.

Congressional District 13: Congressional District 13 shall consist of the part of Santa Clara County contained in the following whole and partial census tracts.
Whole Census Tracts:
CT 5021.01
CT 5021.02
CT 5022
CT 5023
CT 5024
CT 5025
CT 5026.01
CT 5026.02
CT 5027.01
CT 5027.02
CT 5028
CT 5029.01
CT 5029.02
CT 5029.03

CT 5029.05
CT 5029.06
CT 5029.07
CT 5029.08
CT 5030.01
CT 5030.02
CT 5030.03
CT 5032.06
CT 5032.07
CT 5032.08
CT 5033.09
CT 5049.01
CT 5050.01
CT 5052.02
CT 5052.03
CT 5053.02
CT 5053.03
CT 5053.04
CT 5053.05
CT 5054.01
CT 5054.02
CT 5054.03
CT 5055
CT 5056
CT 5057
CT 5058
CT 5059
CT 5060
CT 5061.01
CT 5061.02
CT 5061.03
CT 5062.02
CT 5062.03
CT 5062.04
CT 5063.01
CT 5063.02
CT 5063.04

CT 5063.05
CT 5064.01
CT 5064.02
CT 5065.01
CT 5065.02
CT 5065.03
CT 5066.01
CT 5066.03
CT 5066.04
CT 5066.05
CT 5066.06
CT 5067.01
CT 5067.02
CT 5067.03
CT 5068.01
CT 5068.02
CT 5068.03
CT 5068.04
CT 5069
CT 5079.01
CT 5079.03
CT 5119.01
CT 5119.03
CT 5119.04
CT 5119.05
CT 5119.07
CT 5120.02
CT 5120.05
CT 5120.06
CT 5120.07
CT 5120.08
CT 5120.09
CT 5120.10
CT 5120.11
CT 5120.12
CT 5120.13
CT 5120.14

CT 5120.15
CT 5120.16
Partial Census Tracts:
CT 5020—Portions not in Congressional District 10.
CT 5033.08—Portions not in Congressional District 10.
CT 5033.10—Block 141.
CT 5046.02—Portions not in Congressional District 10.
CT 5052.01—That portion in the City of Santa Clara.
CT 5053.01—All except portions in the City of Sunnyvale.
CT 5070—That portion in the Town of Los Gatos and the unincorporated portions of blocks 101 and 102.
CT 5071—Portions in the Town of Los Gatos and the unincorporated portions of Block Group 5 and block 425.
CT 5072.02—That portion in the Town of Los Gatos.
CT 5072.03—All except portions in the City of Monte Sereno.
CT 5072.04—Portions in the Town of Los Gatos and the City of Campbell and the unincorporated portions of Blocks 215, 216, 219, 251, and 252.
CT 5078.04—That portion in the City of San Jose.
CT 5079.04—That portion in the City of San Jose.
CT 5080.02—Excluding that portion in the City of Cupertino.
CT 5081.02—That portion in the City of Santa Clara.
CT 5082.02—That portion in the City of Santa Clara.
CT 5085.06—That portion in the City of Santa Clara.
CT 5087.02—That portion in the City of Santa Clara.
CT 5119.06—Blocks 502 through 518 and blocks 520 and 521.
CT 5119.08—Blocks 620 through 632.

Congressional District 14: Congressional District 14 shall consist of the following whole counties:
Alpine
Amador
El Dorado
Lassen

Modoc
Placer
Plumas
Sierra
together with the part of Nevada County not contained in Congressional District 2 and the part of San Joaquin County not contained in Congressional District 18.

Congressional District 15: Congressional District 15 shall consist of the following whole counties.
Mariposa
Merced
Stanislaus
together with the part of Fresno County contained in the following whole and partial census tracts.
Whole Census Tracts:
CT 16
CT 17
CT 39
CT 40
CT 41
CT 70
CT 71
CT 72
CT 73
CT 74
CT 75
CT 76
CT 77
CT 78
CT 79
CT 80
CT 81
CT 82
CT 83
CT 84.01
CT 84.02
Partial Census Tracts:

CT 8—The unincorporated portions of blocks 901 and 906.

CT 18—Portions not in the City of Fresno.

CT 19—Portions not in the City of Fresno.

CT 38—Portions not in the City of Fresno except block 926 and Block Group 1 excluding blocks 108, 109, and 116.

CT 68—All except portions in the City of Reedley.

Congressional District 16: Congressional District 16 shall consist of the following whole counties:

Monterey

San Benito

together with the part of Santa Cruz County not contained in Congressional District 12 and together with the part of San Luis Obispo County contained in the following whole and partial census tracts:

Whole Census Tracts:

CT 104

CT 105

CT 106

CT 106.99

CT 109

CT 110

CT 111

CT 112

CT 113

Partial Census Tracts:

CT 107—Portions of the City of Morro Bay and Eds 0083, 0084T, 0084U, 0085T, and 0085U.

CT 108—All except those portions south of Los Osos Valley Road that are not in the City of San Luis Obispo.

CT 115—Portions in the City of San Luis Obispo and Eds 122, 125, 126, 127, 178A, and 178B.

CT 116—Portions in the City of San Luis Obispo.

Congressional District 17: Congressional District 17 shall consist of the following whole counties:

Kings

Tulare

together with the part of Fresno County contained in the following whole and partial census tracts:

Whole Census Tracts:

CT 14.03
CT 14.04
CT 31.02
CT 42.02
CT 43
CT 44.01
CT 44.02
CT 45.03
CT 45.04
CT 45.05
CT 45.06
CT 54.06
CT 54.07
CT 55.01
CT 55.02
CT 56.01
CT 56.02
CT 57
CT 63
CT 64.01
CT 64.02
CT 64.03
CT 65
CT 66
CT 67

Partial Census Tracts:

CT 14.01—Blocks 112, 206, 207, 910 and the unincorporated portions of Block Group 1 and blocks 205, 307, 909, 919, and 920.

CT 31.01—Portions in the City of Clovis.

CT 46—Block Group 1 and blocks 201, 202, 203, 204, 213, 214, 215, 216, 217, 218, 219, and 220.

CT 50—Block Groups 3 and 4.

CT 58—Portions in the City of Clovis and unincorporated portions of blocks 115, 906, 907, 910, 912, 913, 914, 917, 918, 919, 924, 925, and 926.

CT 59.01—Portions north of Kings Canyon Road.

CT 59.02—Portions north of Kings Canyon Road.

CT 68—Portions in the City of Reedley.

together with the part of Kern County contained in the following whole and partial census tracts.

Whole Census Tracts:

CT 11.01
CT 11.02
CT 11.03
CT 23.01
CT 43
CT 44
CT 46
CT 47
CT 48
CT 49
CT 50

Partial Census Tracts:

CT 9.06—All except portions in the City of Bakersfield and blocks 103, 104, 105, 106, 117, and 123.

CT 9.07—All except portions in the City of Bakersfield.

CT 10—All except portions in the City of Bakersfield.

CT 12—All except portions in the City of Bakersfield.

CT 23.02—All except portions in the City of Bakersfield.

CT 24—The unincorporated portions of Block Group 2 and block 403.

CT 25—Blocks 106, 107, 108, 109, 113, and 114.

CT 51.01—All except those portions in the cities of Bakersfield and Tehachapi and Eds 317, 318, 319, 320, and 325.

Congressional District 18: Congressional District 18 shall consist of the following whole counties:

Calaveras
Madera

Mono
Tuolumne
together with the part of Fresno County not contained in Congressional Districts 15 and 17,
together with the part of San Joaquin County contained in the following whole and partial census tracts:
Whole Census Tracts:
CT 1
CT 2
CT 3
CT 4
CT 5
CT 6
CT 7
CT 8
CT 9
CT 10
CT 11.01
CT 11.02
CT 13
CT 15
CT 16
CT 17
CT 18
CT 19
CT 20
CT 21
CT 22
CT 23
CT 24
CT 25
CT 26
CT 27.01
CT 27.02
CT 29
CT 31.03
CT 33.03

CT 33.06
CT 33.07
CT 34.01
CT 34.02
CT 36.01
CT 36.02
CT 48
Partial Census Tracts:
CT 12—Block Groups 2, 3, and 5, and blocks 418, 419, 422, 423, 424, 426, 427, 430, and 431.
CT 37—All except the unincorporated portions of Block Group 4.
CT 47—Portions in Ed 3.

Congressional District 19: Congressional District 19 shall consist of the following whole county:
Santa Barbara
together with the part of Ventura County contained in the following whole and partial census tracts:
Whole Census Tracts:
CT 2
CT 4
CT 5
CT 6
CT 7
CT 8
CT 11
CT 12.01
CT 12.02
CT 12.03
CT 12.04
CT 12.05
CT 13
CT 14
CT 15.01
CT 15.02
CT 16.01
CT 16.02

CT 17
CT 18
CT 19
CT 20
CT 21.01
CT 21.02
CT 22
CT 23
CT 24
CT 25
CT 26
CT 27
CT 28.01
CT 28.02
CT 29
CT 30
CT 31
CT 32
CT 33
CT 34
CT 35
CT 37
CT 38
CT 39
CT 40
CT 41
CT 45
CT 47.01
CT 47.03
CT 49
CT 50

Partial Census Tracts:

CT 1--Portions north of the southern line of Sespe Condor Sanctuary west to T5N/T4N and its western extension to the tract boundary.

CT 10—All except portions in the City of Ojai.

CT 47.02—All except Block group 3 in the City of Oxnard and unincorporated portions of blocks 304 and 305.

Congressional District 20: Congressional District 20 shall consist of the following whole county:

Inyo

together with the part of Kern County not contained in Congressional District 17, together with the part of San Luis Obispo County not contained in Congressional District 16, together with the part of Los Angeles County contained in the following whole and partial census tracts:

Whole Census Tracts:

CT 9006.01
CT 9006.02
CT 9006.03
CT 9007.02
CT 9008.01
CT 9008.02
CT 9009
CT 9010
CT 9011
CT 9012.01
CT 9012.02
CT 9200.01
CT 9203.21

Partial Census Tracts:

CT 9003—That portion in the City of Lancaster.

CT 9005—All except portions in the City of Palmdale.

CT 9201—Blocks 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, and 202.

Congressional District 21: Congressional District 21 shall consist of the part of Los Angeles County contained in the following whole and partial census tracts:

Whole Census Tracts:

CT 1011
CT 1012
CT 1013
CT 1014
CT 1021.01
CT 1031.01

CT 1031.02
CT 1032.01
CT 1033.01
CT 1033.02
CT 1034
CT 1063
CT 1081
CT 1082
CT 1112.01
CT 1112.04
CT 1131
CT 1132.01
CT 1132.02
CT 1133.01
CT 1133.02
CT 1133.03
CT 1153.01
CT 1154.01
CT 1372.02
CT 5990
CT 5991
CT 8002
CT 8003.01
CT 8003.21
CT 8003.22
CT 9007.01
CT 9202
CT 9203.03
CT 9203.23

Partial Census Tracts:

CT 1021.02—Portions not in Congressional District 26.

CT 1032.02—Portions not in Congressional District 26.

CT 1061.01—Block Group 1 and blocks 234, 306, 307, 310, 311, 326, 327, 328, and 330.

CT 1061.02—Blocks 210, 211, 212, 214, 216, and 224.

CT 1062—Blocks 104, 105, 106, 107, 108, 109, 110, 128, 215, 216, 219, 221, 222, 223, 224, 234, 240, 241, 246, 247, 248, 260, 261, 262, and 263.

CT 1064—Blocks 206, 235, 305, 307, 308, 309, 310, 311, 313, 431, and 432.

CT 1065—Portions not in Congressional District 26.

CT 1066.02—Portions not in Congressional District 26.

CT 1066.03—Portions not in Congressional District 26.

CT 1066.04—Portions not in Congressional District 26.

CT 1111.01—Blocks 123, 124, and 125.

CT 1111.02—Block Group 7.

CT 1112.02—Portions not in Congressional District 26.

CT 1112.03—Portions not in Congressional District 26.

CT 1132.03—Portions not in Congressional District 23.

CT 1134.01—Portions not in Congressional District 23.

CT 1134.02—Portions not in Congressional District 23.

CT 1151.01—Portions not in Congressional District 26.

CT 1151.02—Portions not in Congressional District 23.

CT 1152.01—Portions not in Congressional District 23.

CT 1152.02—Portions not in Congressional District 23.

CT 1153.02—Portions not in Congressional District 23.

CT 1173.02—Blocks 105, 106, 201, 202, 203, 204, 205, 206, 207, 208, 209, 301, 302, 303, 305, 309, 310, 311, 312, 313, 320, and 321.

CT 1344.01—Blocks 105, 106, 107, 109, 110, 111, 112, 113, 201, 202, 203, 204, 205, 206, 207, 222, 223, 224, and 932.

CT 1344.02—All except Block Group 3 and blocks 110, 111, 112, 210, 211, 212, 219, 225, and 226.

CT 1352.01—Blocks 201, 203, 205, 206, 207, 208, and 209.

CT 1352.02—Blocks 306, 307, 308, 309, 310, and 311.

CT 1352.03—Blocks 414, 415, 416, and 421.

CT 1373.01—Blocks 102, 106, 107, 108, 109, 113, 115, 118, 119, 120, 121, 122, and 124.

CT 1373.02—Block 205.

CT 1373.03—Blocks 102, 103, 105, 106, 107, 114, 133, 137, and 138.

CT 8004—Ed 400.

CT 9201—Portions not in Congressional District 20.

CT 9203.12—Portions not in Congressional District 22.
CT 9302—That portion not in Congressional District 22. together with the part of Ventura County not contained in Congressional District 19.

Congressional District 22: Congressional District 22 shall consist of the part of Los Angeles County contained in the following whole and partial census tracts:

Whole Census Tracts:
CT 3001
CT 3002
CT 3003
CT 3004
CT 3005
CT 3006
CT 3007.01
CT 3007.02
CT 3008
CT 3009
CT 3010
CT 3011
CT 3012.01
CT 3012.02
CT 3013
CT 3014
CT 3015
CT 3016
CT 3017
CT 3018
CT 3019
CT 3020
CT 3021.01
CT 3021.02
CT 3022
CT 3023
CT 3024
CT 3025.01
CT 3025.02

CT 3101
CT 3102
CT 3103
CT 3115
CT 3116
CT 4303
CT 4304
CT 4305.01
CT 4305.02
CT 4306
CT 4307.01
CT 4307.21
CT 4307.22
CT 4308.01
CT 4308.02
CT 4308.03
CT 4309
CT 4310
CT 4313
CT 4314
CT 4316
CT 4317
CT 4318
CT 4319
CT 4320
CT 4600
CT 4601
CT 4605.01
CT 4605.02
CT 4606
CT 4607
CT 4612
CT 4613
CT 4614
CT 4625
CT 4626
CT 4629

CT 4630
CT 4631.01
CT 4631.02
CT 4632
CT 4635
CT 4636
CT 4637
CT 4639
CT 4640
CT 4641
CT 4642
CT 4800.01
CT 4801.01
CT 4805
CT 4806
CT 4807.01
CT 4807.02
CT 4812.01
CT 9102
CT 9103
CT 9108.01
CT 9200.03
CT 9200.21
CT 9200.22
CT 9200.23
CT 9200.24
CT 9200.25
CT 9203.11
CT 9203.13
CT 9203.22
CT 9301
Partial Census Tracts:
CT 3104—Portions not in Congressional District 26.
CT 3106—Portions not in Congressional District 26.
CT 3107—Portions not in Congressional District 26.
CT 3108—Portions not in Congressional District 26.
CT 3109—Portions not in Congressional District 26.

CT 3114—Portions not in Congressional District 26.
CT 3117—Portions not in Congressional District 26.
CT 3118—Portions not in Congressional District 26.
CT 4311—Portions not in Congressional District 30.
CT 4312—Portions not in Congressional District 30.
CT 4315—Portions not in Congressional District 30.
CT 4321.01—Portions not in Congressional District 30.
CT 4321.02—Portions not in Congressional District 30.
CT 4323—Portions not in Congressional District 30.
CT 4325—Portions not in Congressional District 30.
CT 4633—All except blocks 205, 206, 207, 216, 217, and 218.
CT 4634—Blocks 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 213, 214, 217, 218, 219, 220, 221, 301, 302, and 303.
CT 4800.02—Portions not in Congressional District 30.
CT 4801.02—All except portions in Congressional District 30.
CT 9104—All except Block Group 4.
CT 9108.02—All except Ed 149.
CT 9203.12—Blocks 427 and 435.
CT 9302—That portion of Ed 75 except that portion south of Herreres and Olive Canyon and west of Power and Light Road and its southern extension to the south tract boundary east of Power and Light Road.

Congressional District 23: Congressional District 23 shall consist of the part of Los Angeles County contained in the following whole and partial census tracts:
Whole Census Tracts:
CT 1154.02
CT 1273
CT 1274
CT 1275
CT 1276.01
CT 1276.02
CT 1283.02
CT 1284

CT 1287.02
CT 1288
CT 1311
CT 1312
CT 1313
CT 1314
CT 1315
CT 1316
CT 1317
CT 1318
CT 1319
CT 1321
CT 1322
CT 1323
CT 1324
CT 1325
CT 1326
CT 1327
CT 1328
CT 1329
CT 1331.01
CT 1331.02
CT 1341.01
CT 1341.02
CT 1342.01
CT 1342.02
CT 1343.01
CT 1343.02
CT 1343.03
CT 1345
CT 1346
CT 1347
CT 1348.01
CT 1348.02
CT 1349.01
CT 1349.02
CT 1351.01

CT 1351.02
CT 1371.01
CT 1371.02
CT 1372.01
CT 1374.01
CT 1374.02
CT 1375.01
CT 1375.02
CT 1375.03
CT 1375.04
CT 1376
CT 1391
CT 1392
CT 1393
CT 1394
CT 1397.03
CT 1398.01
CT 1398.02
CT 2149
CT 2164
CT 2165
CT 2166
CT 2621
CT 2622
CT 2623.01
CT 2623.02
CT 2623.03
CT 2625
CT 2641.01
CT 2651
CT 2652
CT 2653.01
CT 2653.02
CT 2654.01
CT 2654.02
CT 2655
CT 2656

CT 2657
CT 2671
CT 2672
CT 2673
CT 2677
CT 2678
CT 2679
CT 2691
CT 2692
CT 2693
CT 2694
CT 2695
CT 2696
CT 2697
CT 2698
CT 2702
CT 2703
CT 7002
CT 7003
CT 7005
CT 7006
CT 7007
CT 7008
CT 7009.01
CT 7009.02
CT 7010
CT 7011
CT 8001
CT 8005

Partial Census Tracts:

CT 1132.03—Block Group 1 and blocks 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 214, and 215.

CT 1134.01—Blocks 110, 111, 112, 113, 114, 115, 201, 202, 203, 204, 309, 310, 311, and 312.

CT 1134.02—All except Block Group 1 and blocks 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 301, 302, 303, 304, 305, 405, 406, 407, 408, 409, 410, 606, 607, 608, 609, 610, 611, 617, and 618.

CT 1151.02—Blocks 116, 117, and 119.

CT 1152.01—Blocks 105, 106, 107, 108, 109, 112, 207, 209, 210, 211, 212, and 213.

CT 1152.02—Blocks 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 119, 211, 212, 213, 214, 215, 216, 219, 301, 302, 303, 305, 306, 307, 308, 309, 317, and 324.

CT 1153.02—All except blocks 104, 105, 106, 107, 108, 109, 110, 111, 112, and 113.

CT 1246—Portions not in Congressional District 26.

CT 1272—Portions not in Congressional District 26.

CT 1283.01—Block Group 4 and blocks 304, 305, 306, 309, 310, and 311.

CT 1285—Blocks 209, 211, 213, 214, 216, 301, 302, 303, 304, 305, 306, 307, 308, and 309.

CT 1287.01—Portions not in Congressional District 26.

CT 1344.01—That portion not in Congressional District 21.

CT 1344.02—That portion not in Congressional District 21.

CT 1352.01—That portion not in Congressional District 21.

CT 1352.02—That portion not in Congressional District 21.

CT 1352.03—That portion not in Congressional District 21.

CT 1373.01—That portion not in Congressional District 21.

CT 1373.02—That portion not in Congressional District 21.

CT 1373.03—That portion not in Congressional District 21.

CT 1395—That portion not in Congressional District 26.

CT 2624—That portion not in Congressional District 27.

CT 2626—Block Groups 1 and 2, and blocks 903, 904, 905, 906, 907, 917, 918, 919, 923, 924, 925, and 927.

CT 7004—That portion not in Congressional District 24.

CT 8004—That portion not in Congressional District 21.

Congressional District 24: Congressional District 24 shall consist of the part of Los Angeles County contained in the following whole and partial census tracts:

Whole Census Tracts:

CT 1223
CT 1224
CT 1231.01
CT 1231.02
CT 1232
CT 1233.01
CT 1238
CT 1239
CT 1241.01
CT 1241.02
CT 1242.01
CT 1242.02
CT 1243
CT 1252
CT 1253
CT 1254
CT 1255
CT 1256
CT 1431
CT 1432
CT 1436.01
CT 1437
CT 1438.01
CT 1438.02
CT 1873
CT 1881
CT 1882.01
CT 1882.02
CT 1883
CT 1891
CT 1892
CT 1893
CT 1894

CT 1895
CT 1896
CT 1897.01
CT 1897.02
CT 1898
CT 1899
CT 1901
CT 1902
CT 1903.01
CT 1903.02
CT 1904
CT 1905
CT 1906
CT 1907
CT 1908
CT 1909
CT 1911
CT 1912.01
CT 1912.02
CT 1913
CT 1914
CT 1915
CT 1916.01
CT 1916.02
CT 1917
CT 1918
CT 1919.01
CT 1919.02
CT 1921
CT 1922
CT 1923
CT 1924
CT 1925
CT 1926
CT 1927
CT 1941
CT 1944

CT 1945
CT 1951
CT 1952
CT 1953
CT 1954
CT 1955
CT 1956
CT 1957
CT 1958
CT 1959
CT 1973
CT 1974
CT 1975
CT 2084
CT 2085
CT 2086
CT 2111
CT 2112
CT 2113
CT 2114
CT 2115
CT 2116
CT 2117
CT 2118
CT 2119
CT 2121
CT 2125
CT 2126
CT 2141
CT 2142
CT 2143
CT 2144
CT 2145
CT 2146
CT 2147
CT 2148
CT 2151

CT 2152
CT 2153
CT 2161
CT 2162
CT 2163
CT 2167
CT 2168
CT 2169
CT 3200
CT 7001

Partial Census Tracts:

CT 1233.02—All except Block Group 4 and blocks 305 and 306.

CT 1871—All except portions southeast of the Glendale Freeway.

CT 1872—All except blocks 201, 202, 203, 204, 205, 206, 209, and 210.

CT 2087—All except blocks 103, 104, 105, and 106.

CT 2124—That portion not in Congressional District 28.

CT 2127—That portion not in Congressional District 28.

CT 2128—All except blocks 101, 102, 103, 104, 106, 201, 206, 301, 302, and 303.

CT 7004—All Block Group 1 except blocks 111 and 113.

Congressional District 25: Congressional District 25 shall consist of the part of Los Angeles County contained in the following whole and partial census tracts:

Whole Census Tracts:

CT 1811
CT 1812
CT 1813
CT 1814
CT 1815
CT 1816
CT 1831.01
CT 1831.02
CT 1832
CT 1833

CT 1834
CT 1835
CT 1836
CT 1837
CT 1838
CT 1851
CT 1852.01
CT 1852.02
CT 1853
CT 1861
CT 1862
CT 1863
CT 1864
CT 1971
CT 1972
CT 1976
CT 1977
CT 1991
CT 1992
CT 1993
CT 1994
CT 1995
CT 1996
CT 1997
CT 1998
CT 1999
CT 2011
CT 2012
CT 2013
CT 2014.01
CT 2014.02
CT 2015.01
CT 2015.02
CT 2016
CT 2017
CT 2031
CT 2032

CT 2033
CT 2034
CT 2035
CT 2036
CT 2037
CT 2038
CT 2039
CT 2041
CT 2042
CT 2043
CT 2044
CT 2045.01
CT 2045.02
CT 2046
CT 2047
CT 2048
CT 2049
CT 2051
CT 2061
CT 2062
CT 2063
CT 2064
CT 2065
CT 2071
CT 2072
CT 2073
CT 2074
CT 2075
CT 2076
CT 2077
CT 2078
CT 2079
CT 2081
CT 2082
CT 2083
CT 2091
CT 2092

CT 2261
CT 2262
CT 2263
CT 4602
CT 4603
CT 4604
CT 4608
CT 4609
CT 4610
CT 4611
CT 4615
CT 4616
CT 4617
CT 4619
CT 4620
CT 4621
CT 4622
CT 4623
CT 4624
CT 4627
CT 4628
CT 4638
CT 5303
CT 5305
CT 5306
CT 5307
CT 5308
CT 5309
CT 5310
CT 5311
CT 5312
CT 5314
CT 5315
CT 5316.01
CT 5316.02
Partial Census Tracts:
CT 1871—Portions not in Congressional District 24.

CT 1872—Portions not in Congressional District 24.
CT 2241—Portions not in Congressional District 28.
CT 2266—Portions not in Congressional District 29.
CT 4633—Portions not in Congressional District 22.
CT 4634—Portions not in Congressional District 22.
CT 5304—Portions not in Congressional District 30.
CT 5313—Portions not in Congressional District 30.

Congressional District 26: Congressional District 26 shall consist of the part of Los Angeles County contained in the following whole and partial census tracts:

Whole Census Tracts:
CT 1041.01
CT 1041.02
CT 1042.01
CT 1042.02
CT 1043
CT 1044
CT 1045
CT 1046
CT 1047
CT 1048
CT 1066.01
CT 1067
CT 1068
CT 1091
CT 1092
CT 1093
CT 1094
CT 1095
CT 1096.01
CT 1096.02
CT 1097
CT 1098.01
CT 1098.02
CT 1113.01
CT 1113.02
CT 1114.01

CT 1114.02
CT 1171
CT 1172.01
CT 1172.02
CT 1173.01
CT 1173.03
CT 1174.01
CT 1174.02
CT 1174.03
CT 1175
CT 1176
CT 1191
CT 1192
CT 1193
CT 1194
CT 1195
CT 1196
CT 1197
CT 1198
CT 1199
CT 1201.01
CT 1201.02
CT 1202
CT 1203
CT 1204
CT 1211
CT 1212
CT 1213
CT 1214
CT 1215
CT 1216
CT 1217
CT 1218
CT 1219
CT 1221
CT 1222
CT 1234

CT 1235
CT 1236.01
CT 1236.02
CT 1237
CT 1244
CT 1245
CT 1247
CT 1248
CT 1249.01
CT 1249.02
CT 1251
CT 1271.01
CT 1271.02
CT 1277
CT 1278.01
CT 1278.02
CT 1279
CT 1281
CT 1282
CT 1286
CT 1289
CT 1396
CT 1397.01
CT 1397.02
CT 1411
CT 1412
CT 1413.01
CT 1413.02
CT 1414
CT 1415
CT 1416
CT 1417
CT 1433
CT 1434.01
CT 1434.02
CT 1435
CT 1436.02
CT 1439.01

CT 1439.02
CT 1942
CT 1943
CT 2611.01
CT 2611.02
CT 2612
CT 3105
CT 3110
CT 3111
CT 3112
CT 3113
CT 3201
CT 3202
CT 3203

Partial Census Tracts:

CT 1021.02—Blocks 111, 118, 205, 210, 301, 302, 303, 304, 305, 306, 401, 402, 403, 404, 405, and 406.

CT 1032.02—Blocks 104, 105, 106, 107, 108, 109, 110, 111, 117, and 118.

CT 1061.01—Portions not in Congressional District 21.

CT 1061.02—Portions not in Congressional District 21.

CT 1062—Portions not in Congressional District 21.

CT 1064—Portions not in Congressional District 21.

CT 1065—All except blocks 405, 408, 412, 413, 414, 905, 907, 908, 917, 918, 922, 923, 924, 925, 926, 927, and 928.

CT 1066.02—Blocks 901, 902, and 903.

CT 1066.03—Blocks 106, 107, 108, 111, 112, and 113.

CT 1066.04—Block Group 1 except blocks 111, 112, and 113; and blocks 906, 907, 910, 911, 912, and 922.

CT 1111.01—Portions not in Congressional District 21.

CT 1111.02—Portions not in Congressional District 21.

CT 1112.02—Block Group 1 and blocks 201, 202, 203, 211, 212, 213, 214, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 324, 325, and 326.

CT 1112.03—Blocks 106, 107, 108, 109, 110, 111, 116, 117, 201, 202, 203, 205, 206, 207, 208, 209, 504, 505, 506, 507, 508, 509, and Block Group 4.

CT 1151.01—Blocks 101, 102, 103, 104, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 126, 127, 202, 206, 207, 210, 211, 212, 222, 223, 227, 317, and 318.

CT 1173.02—Portions not in Congressional District 21.

CT 1233.02—Portions not in Congressional District 24.

CT 1246—Block Group 1.

CT 1272—Blocks 101, 102, 103, 104, 106, 107, 109, 110, 407, 409, 410, 411, and 412.

CT 1283.01—Portions not in Congressonal District 23.

CT 1285—Portions not in Congressional District 23.

CT 1287.01—Block Group 1.

CT 1395—Blocks 101, 104, 105, 106, 107, 108, 111, 112, 201, 212, and 213.

CT 3104—Blocks 303, 304, 305, 306, 307, 308, 309, 312, 313, 316, 317, 318, 401, 402, 403, 404, 405, and 406.

CT 3106—Blocks 502, 505, 506, 508, 510, 511, 512, 602, 603, 608, 609, 610, 611, 612, 613, 614, 615, 616, and 617.

CT 3107—Blocks 105, 106, 107, 108, 109, 110, 112, 113, 114, 115, 210, 213, 214, 215, 216, 217, 301, 302, 303, 304, 305, 306, 311, 312, 313, 314, 401, 402, 403, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 514, 518, 521, 522, 601, 611, 613, and 621.

CT 3108—Blocks 304, 309, 310, 401, 404, 405, 406, 407, 408, 409, 410, 501, 502, 503, 504, 505, 506, and 507.

CT 3109—All except blocks 703, 704, 705, 706, 707, and 708.

CT 3114—Blocks 207, 301, 304, 305, 306, 307, and 308.

CT 3117—Blocks 101, 102, 103, 104, 105, and 106.

CT 3118—Blocks 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 401, 402, 403, 404, 405, 406, 407, 408, 410, and 411.

Congressional District 27: Congressional District 27 shall consist of the part of Los Angeles County contained in the following whole and partial census tracts:

Whole Census Tracts:

CT 2627.01

CT 2627.02
CT 2628
CT 2641.02
CT 2642
CT 2643.01
CT 2643.02
CT 2674.01
CT 2674.02
CT 2675.01
CT 2675.02
CT 2676
CT 2699.01
CT 2699.02
CT 2701
CT 2711.01
CT 2711.02
CT 2712
CT 2713
CT 2714
CT 2715
CT 2716
CT 2717.01
CT 2717.02
CT 2718
CT 2719
CT 2721
CT 2731
CT 2732
CT 2733
CT 2734
CT 2735
CT 2736
CT 2737
CT 2738
CT 2739
CT 2741
CT 2742

CT 2766.03
CT 2781
CT 2947.99
CT 2949.99
CT 2951.99
CT 2961.99
CT 2962.99
CT 2971.99
CT 2976.99
CT 5756.99
CT 5757.99
CT 6005.01
CT 6005.02
CT 6006
CT 6007.01
CT 6007.02
CT 6008.01
CT 6008.02
CT 6009.02
CT 6011
CT 6013.02
CT 6013.03
CT 6019
CT 6020.01
CT 6037.02
CT 6038
CT 6039
CT 6040
CT 6041
CT 6200
CT 6200.99
CT 6201
CT 6202
CT 6203.01
CT 6203.02
CT 6203.03
CT 6204

CT 6205.01
CT 6205.02
CT 6206.01
CT 6206.02
CT 6207.01
CT 6207.02
CT 6208
CT 6209.01
CT 6209.02
CT 6210.01
CT 6210.02
CT 6211
CT 6212
CT 6213.01
CT 6213.02
CT 6214
CT 6500.01
CT 6500.02
CT 6501.01
CT 6501.02
CT 6502
CT 6503
CT 6509.01
CT 6509.02
CT 6510.01
CT 6510.02
CT 7012.01
CT 7012.02
CT 7013.01
CT 7013.02
CT 7014
CT 7015.01
CT 7015.02
CT 7016.01
CT 7016.02
CT 7017.01
CT 7017.02

CT 7018.01
CT 7018.02
CT 7019
CT 7020
CT 7021
CT 7022.01
CT 7022.02
CT 7023
CT 7029.99
Partial Census Tracts:
CT 2624—Blocks 207 and 210.
CT 2626—Portions not in Congressional District 23.
CT 2754—Portions not in Congressional District 28.
CT 2774—Portions not in Congressional District 28.
CT 2913—Portions not in Congressional District 31.
CT 6009.01—Portions not in Congressional District 28.
CT 6016—Portions not in Congressional District 31.
CT 6017—Portions not in Congressional District 31.
CT 6023.01—Portions not in Congressional District 31.
CT 6035—Portions not in Congressional District 31.
CT 6036—Portions not in Congressional District 31.
CT 6037.01—Portions not in Congressional District 31.
CT 6505.01—Block groups 1, 2, and 5.

Congressional District 28: Congressional District 28 shall consist of the part of Los Angeles County contained in the following whole and partial census tracts:

Whole Census Tracts:
CT 2088
CT 2089
CT 2093
CT 2094
CT 2095
CT 2096
CT 2097
CT 2098
CT 2122
CT 2123

CT 2129
CT 2131
CT 2132
CT 2133
CT 2134
CT 2171
CT 2172
CT 2181
CT 2182
CT 2183
CT 2184
CT 2185
CT 2186
CT 2187
CT 2188
CT 2189
CT 2191
CT 2192
CT 2193
CT 2194
CT 2195
CT 2196
CT 2197
CT 2198
CT 2199
CT 2201
CT 2202
CT 2211
CT 2212
CT 2213
CT 2214.01
CT 2214.02
CT 2215.01
CT 2215.02
CT 2216.01
CT 2216.02
CT 2217.01

CT 2217.02
CT 2218
CT 2219
CT 2221
CT 2222
CT 2223
CT 2224
CT 2225
CT 2226
CT 2227
CT 2242
CT 2243
CT 2247
CT 2313
CT 2314
CT 2315
CT 2324
CT 2341
CT 2342
CT 2343
CT 2344
CT 2345
CT 2346
CT 2347
CT 2348
CT 2349
CT 2351
CT 2352.01
CT 2352.02
CT 2361
CT 2362.01
CT 2362.02
CT 2363
CT 2364
CT 2722
CT 2723.01
CT 2723.02

CT 2751.01
CT 2751.02
CT 2752
CT 2753.01
CT 2753.02
CT 2755
CT 2756
CT 2761
CT 2762
CT 2763
CT 2764
CT 2765
CT 2766.01
CT 2766.02
CT 2767
CT 2768
CT 2769
CT 2771
CT 2772
CT 2773
CT 6010
CT 6012.01
CT 6012.02
CT 6013.01
CT 6014.01
CT 6014.02
CT 6015
CT 6018
CT 7024
CT 7025
CT 7026
CT 7027
CT 7028.01
CT 7028.02
CT 7028.03
CT 7029
CT 7030.01

CT 7030.02
CT 7031
CT 7032
Partial Census Tracts:
CT 2087—Portions not in Congressional District 24.
CT 2124—Blocks 201, 202, 205, 206, 207, and 208.
CT 2127—Blocks 108, 109, and 110.
CT 2128—Portions not in Congressional District 24.
CT 2241—Block group 2 and blocks 125, 126, 128, 301, 302, 321, 323, and 325.
CT 2312—Those portions not in Congressional District 29.
CT 2316—Those portions not in Congressional District 29.
CT 2754—Blocks 103, 104, 109, 204, and 205.
CT 2774—Block Group 1.
CT 6009.01—Block Group 4 and Block Group 3 except blocks 316 and 317.

Congressional District 29: Congressional District 29 shall consist of the part of Los Angeles County contained in the following whole and partial census tracts:
Whole Census Tracts:
CT 2244
CT 2245
CT 2246
CT 2264
CT 2265
CT 2267
CT 2281
CT 2282
CT 2283
CT 2284
CT 2285
CT 2286
CT 2287
CT 2288
CT 2289

CT 2291
CT 2292
CT 2293
CT 2294
CT 2311
CT 2317
CT 2318
CT 2319
CT 2321
CT 2322
CT 2323
CT 2325
CT 2326
CT 2327
CT 2328
CT 2371
CT 2372
CT 2373
CT 2374
CT 2375
CT 2376
CT 2377
CT 2378
CT 2379
CT 2381
CT 2382
CT 2383
CT 2384
CT 2385
CT 2386
CT 2391
CT 2392
CT 2393
CT 2394
CT 2395
CT 2396
CT 2397

CT 2398
CT 2399
CT 2401
CT 2402
CT 2403
CT 2404
CT 2405
CT 2406
CT 2407
CT 2408
CT 2409
CT 2411
CT 2412
CT 2421
CT 2422
CT 2423
CT 2424
CT 2425
CT 2426
CT 2427
CT 2428
CT 2429
CT 2431
CT 5325
CT 5326.01
CT 5326.02
CT 5327
CT 5328
CT 5329
CT 5330
CT 5331.01
CT 5331.02
CT 5332
CT 5335
CT 5345
CT 5347
CT 5348

CT 5349
CT 5350
CT 5351.01
CT 5351.02
CT 5352
CT 5353
CT 5355
CT 5356.01
CT 5356.02
CT 5357
CT 5358.01
CT 5358.02
CT 5359
CT 5360
CT 5361
CT 5362
CT 5505
CT 5506
CT 5507
CT 5508
CT 6001
CT 6002.01
CT 6002.02
CT 6003.01
CT 6003.02
CT 6004

Partial Census Tracts:

CT 2312—Blocks 104, 107, 204, and 212.

CT 2316—Block groups 1, 2, and 3, and blocks 501, 502, and 503.

CT 2266—Blocks 207 and 213.

CT 5324—Portions not in Congressional District 30.

CT 5354—All except portions in the City of Lynwood.

CT 5514—Portions not in Congressional District 32.

Congressional District 30: Congressional District 30 shall consist of the part of Los Angeles County contained in the following whole and partial census tracts:

Whole Census Tracts:
CT 4041
CT 4043
CT 4044
CT 4045
CT 4046
CT 4322
CT 4324
CT 4326
CT 4327
CT 4328
CT 4329
CT 4332
CT 4336.01
CT 4336.02
CT 4802
CT 4803
CT 4804
CT 4808.01
CT 4808.02
CT 4809
CT 4810
CT 4811
CT 4812.02
CT 4813
CT 4814
CT 4815
CT 4816.01
CT 4816.02
CT 4817.01
CT 4817.02
CT 4818
CT 4819.01
CT 4819.02
CT 4820.01
CT 4820.02
CT 4821.01

CT 4821.02
CT 4822
CT 4823.01
CT 4823.02
CT 4824.01
CT 4824.02
CT 4825.01
CT 4825.02
CT 4826
CT 4827
CT 4828
CT 5300.01
CT 5300.02
CT 5301.01
CT 5301.02
CT 5302.01
CT 5302.02
CT 5317.01
CT 5317.02
CT 5318
CT 5319
CT 5320
CT 5321
CT 5322
CT 5323.01
CT 5323.02
CT 5333
CT 5334
CT 5336
CT 5337
CT 5338.01
CT 5338.02
CT 5339
CT 5340
CT 5341
CT 5342
CT 5343

CT 5344.01
CT 5344.02
Partial Census Tracts:
CT 4006—Portions in the City of Azusa.
CT 4008—Portions in the City of Azusa.
CT 4039.01—All except portions in the City of Glendora.
CT 4040—All except portions in the City of Glendora.
CT 4042—Portions in the City of Azusa.
CT 4300.01—Portions in the City of Azusa.
CT 4311—All except portions in the City of Monrovia.
CT 4312—All except portions in the City of Monrovia.
CT 4315—All except portions in the cities of Arcadia and Temple City.
CT 4321.01—Portions in the City of El Monte.
CT 4321.02—Portions in the City of El Monte.
CT 4323—All except portions in the City of Temple City.
CT 4325—All except portions in the City of Arcadia.
CT 4331—Portions in the City of El Monte.
CT 4333—All except portions in the City of Industry.
CT 4334—Portions in the City of El Monte.
CT 4335—Portions in the City of El Monte.
CT 4338—Portions in the City of El Monte.
CT 4339—Portions in the City of El Monte.
CT 4340—Portions in the City of El Monte.
CT 4800.02—Blocks 206 and 301.
CT 4801.02—All except blocks 101, 110, and 111, and the unincorporated portion of block 201.
CT 5304—Portions in the City of Monterey Park.
CT 5313—Block Group 7 and block 608.
CT 5324—Portions not in the City of Huntington Park.

Congressional District 31: Congressional District 31 shall consist of the part of Los Angeles County contained in the following whole and partial census tracts:
Whole Census Tracts:
CT 2413
CT 2414
CT 2415

CT 2416
CT 2911
CT 2912
CT 2921
CT 2931
CT 2932.01
CT 2932.02
CT 5400
CT 5401.01
CT 5401.02
CT 5402
CT 5403
CT 5404
CT 5405
CT 5406
CT 5407
CT 5408
CT 5409.01
CT 5409.02
CT 5410.01
CT 5410.02
CT 5411
CT 5412
CT 5413
CT 5414
CT 5415
CT 5416.01
CT 5416.02
CT 5417
CT 5418
CT 5420
CT 5421.01
CT 5421.02
CT 5422
CT 5424.01
CT 5424.02
CT 5425

CT 5426
CT 5427
CT 5428
CT 5429
CT 5430
CT 5431
CT 5432
CT 5433.01
CT 5433.03
CT 5433.21
CT 5433.22
CT 5434
CT 5435.01
CT 5435.02
CT 5435.03
CT 5436.01
CT 5436.02
CT 5436.04
CT 5437.01
CT 5437.02
CT 5437.03
CT 5438.01
CT 5438.02
CT 5439.01
CT 5439.02
CT 5533
CT 5535
CT 5536
CT 5537
CT 5538
CT 5539
CT 5540
CT 5541
CT 5542
CT 5543
CT 5544.02
CT 5702.02

CT 5703.01
CT 6020.02
CT 6021.01
CT 6021.02
CT 6022
CT 6023.02
CT 6024.01
CT 6024.02
CT 6025.01
CT 6025.02
CT 6025.03
CT 6026
CT 6027
CT 6028
CT 6029
CT 6030.01
CT 6030.02
CT 6031
CT 6032
CT 6033
CT 6034

Partial Census Tracts:

CT 2913—Blocks 201 and 206.

CT 2933—Block Group 1.

CT 5354—Portions not in Congressional District 29.

CT 5440—All except portions in the City of Long Beach.

CT 5531—Portions not in Congressional District 32.

CT 5532—Portions not in Congressional District 32.

CT 5544.01—Portions not in Congressional District 32.

CT 5705—Block Groups 6, 7, and 8, and Block Group 5, except blocks 501, 502, and 503.

CT 6016—Portions in the City of Hawthorne.

CT 6017—Portions in the City of Hawthorne.

CT 6023.01—All except blocks 102, 103, 106, 107, 108, 109, 110, 201, 202, 203, 204, 205, 208, 507, 508, 509, 510, 511, 512, and 513, and the unincorporated portion of blocks 101, 104, 105, 206, and 207.

CT 6035—Portions in the City of Gardena.
CT 6036—Portions in the City of Gardena.
CT 6037.01—Portions in the City of Hawthorne.

Congressional District 32: Congressional District 32 shall consist of the part of Los Angeles County contained in the following whole and partial census tracts:

Whole Census Tracts:
CT 2941
CT 2942
CT 2943
CT 2944
CT 2945
CT 2946
CT 2947
CT 2948
CT 2949
CT 2951
CT 2962
CT 2963
CT 2964
CT 2965
CT 2966
CT 2967
CT 2968
CT 2969
CT 2972
CT 5436.03
CT 5504
CT 5509
CT 5510
CT 5511
CT 5512
CT 5513
CT 5515
CT 5516
CT 5517
CT 5518

CT 5534
CT 5550
CT 5551.01
CT 5551.02
CT 5552.01
CT 5700.01
CT 5700.02
CT 5700.03
CT 5701
CT 5702.01
CT 5703.02
CT 5704
CT 5706
CT 5707.01
CT 5707.02
CT 5708
CT 5709.01
CT 5709.02
CT 5710
CT 5711.01
CT 5711.02
CT 5712
CT 5713
CT 5714
CT 5715.01
CT 5716
CT 5717
CT 5721
CT 5722.01
CT 5722.02
CT 5723
CT 5724
CT 5725
CT 5726
CT 5727
CT 5728
CT 5729

CT 5730
CT 5731
CT 5732.01
CT 5732.02
CT 5733
CT 5736
CT 5737
CT 5738
CT 5740
CT 5741
CT 5742.01
CT 5742.02
CT 5743
CT 5744
CT 5746.01
CT 5749.01
CT 5750.02
CT 5751
CT 5752
CT 5753
CT 5754
CT 5755
CT 5758
CT 5759
CT 5762
CT 5763
CT 5764
CT 5765
CT 5768
CT 5769
CT 5770
CT 6099

Partial Census Tracts:

CT 2933—All except portions in Congressional District 31.

CT 2971—All except portions in Congressional District 42.

CT 2973—All except portions in Congressional District 42.

CT 2975—Blocks 102, 103, 104, 105, 106, 108, 117, and 118.

CT 2976—All except portions in Congressional District 42.

CT 5440—All except portions in Congressional District 31.

CT 5514—Block Group 1 and blocks 201, 202, 203, 204, and 205.

CT 5531—All except blocks 102, 103, 401, 402, 403, 404, 405, 406, 408, and 413.

CT 5532—Block Groups 1 and 2, except blocks 206, 207, and 208.

CT 5544.01—All except Block Groups 4 and 5, and block 103.

CT 5545.22—All except portions in Congressional District 38.

CT 5705—All except portions in Congressional District 31.

CT 5718—All except portions in Congressional District 42.

CT 5720.02—All except portions in Congressional District 42.

CT 5745—Block Group 4, except blocks 401, 402, and 405.

CT 5749.02—All except portions in Congressional District 42.

CT 5771—All except portions in Congressional District 42.

Congressional District 33: Congressional District 33 shall consist of the part of Los Angeles County contained in the following whole and partial census tracts:

Whole Census Tracts:

CT 4002.01

CT 4002.02

CT 4003

CT 4004.01
CT 4004.02
CT 4005
CT 4009
CT 4010.01
CT 4010.02
CT 4011.01
CT 4011.02
CT 4012.01
CT 4012.02
CT 4012.03
CT 4013.02
CT 4013.11
CT 4013.12
CT 4015
CT 4016
CT 4017.01
CT 4017.02
CT 4018
CT 4019.01
CT 4019.02
CT 4020
CT 4021.01
CT 4021.02
CT 4022
CT 4023.01
CT 4023.02
CT 4024.01
CT 4024.02
CT 4024.03
CT 4024.04
CT 4025.01
CT 4025.02
CT 4026
CT 4027.01
CT 4027.02
CT 4028

CT 4029.01
CT 4029.02
CT 4030
CT 4032
CT 4033.11
CT 4033.13
CT 4033.14
CT 4033.15
CT 4034
CT 4037.01
CT 4037.21
CT 4037.22
CT 4038
CT 4039.02
CT 4059
CT 4060
CT 4061.01
CT 4061.02
CT 4085.03
CT 4086.21
CT 4086.22
CT 4086.23
CT 4086.24
CT 4086.25
CT 4087.01
CT 4087.02
CT 4088
CT 4300.02
CT 4301.01
CT 4301.02
CT 4302
CT 5001
CT 5002.01
CT 5002.02
CT 5012
CT 5013
CT 5014

CT 5015.01
CT 5015.02
CT 5016
CT 5017
CT 5018
CT 5019
CT 5033.01
CT 5034.01
CT 5034.02
CT 5036.01
CT 5036.02
CT 5037.01
CT 5037.02
CT 5037.03
CT 5038.01
CT 5038.02
CT 5039.01
CT 5039.02
CT 5040.01
CT 5040.02
CT 9109
CT 9110
CT 9300
Partial Census Tracts:
CT 4006—Portions not in Congressional District 30.
CT 4008—Portions not in Congressional District 30.
CT 4033.02—Portions not in the City of Industry.
CT 4033.12—Portions not in the City of Industry.
CT 4035—Portions not in the City of West Covina.
CT 4036—Portions not in the City of West Covina.
CT 4039.01—Portions not in Congressional District 30.
CT 4040—Portions not in Congressional District 30.
CT 4042—Portions not in Congressional District 30.
CT 4054—Portions not in Congressional District 34.
CT 4057—Portions not in Congressional District 34.
CT 4058—Portions not in Congressional District 34.
CT 4062—Portions not in Congressional District 34.

CT 4084.02—Portions not in Congressional District 34.
CT 4300.01—Portions not in Congressional District 30.
CT 5003—Portions not in Congressional District 34.
CT 5010—Portions not in Congressional District 34.
CT 5020.01—Portions not in Congressional District 34.
CT 5020.02—Portions not in Congressional District 34.
CT 5021—Portions not in Congressional District 34.
CT 5029.02—Portions not in Congressional District 34.
CT 5035.02—Portions not in Congressional District 34.
CT 5041.01—Portions not in Congressional District 34.
CT 9100—Portions not in Congressional District 35.
CT 9107—Portions not in Congressional District 35.
CT 9108.02—Portions not in Congressional District 22.

Congressional District 34: Congressional District 34 shall consist of the part of Los Angeles County contained in the following whole and partial census tracts:

Whole Census Tracts:
CT 4047
CT 4048
CT 4049
CT 4050
CT 4051
CT 4052
CT 4053
CT 4055
CT 4056
CT 4063
CT 4064.01
CT 4064.02
CT 4065
CT 4066.01
CT 4066.02
CT 4067
CT 4068
CT 4069
CT 4070
CT 4071.01

CT 4071.02
CT 4072
CT 4073
CT 4074
CT 4075
CT 4076
CT 4077
CT 4078
CT 4079
CT 4080.01
CT 4080.02
CT 4081.01
CT 4081.02
CT 4081.31
CT 4081.32
CT 4082.01
CT 4082.02
CT 4083.01
CT 4083.02
CT 4083.03
CT 4084.01
CT 4085.01
CT 4085.02
CT 4086.01
CT 4337
CT 5004.01
CT 5004.02
CT 5005
CT 5006
CT 5007
CT 5008
CT 5009
CT 5022
CT 5023
CT 5024
CT 5025
CT 5026.01

CT 5026.02
CT 5027
CT 5028
CT 5029.01
CT 5030
CT 5031.01
CT 5031.02
CT 5032.01
CT 5032.02
CT 5033.02
CT 5035.01
CT 5041.02
CT 5500
CT 5501
CT 5502
CT 5503
CT 5519
CT 5520
CT 5521
CT 5522
CT 5523
CT 5524
CT 5526
CT 5527
CT 5528
CT 5529
CT 5530
CT 5546
CT 5547
CT 5548.01
CT 5548.02
CT 5549
Partial Census Tracts:
CT 4033.02—Portions in the City of Industry.
CT 4033.12—Portions in the City of Industry.
CT 4035—Portions in the City of West Covina.

CT 4036—Portions in the City of West Covina.
CT 4054—All except portions in the City of Covina.
CT 4057—All except portions in the City of Covina and block 101.
CT 4058—Portions not in the City of Covina.
CT 4062—Portions in the City of West Covina.
CT 4084.02—Portions in the City of Industry and unincorporated areas north of the Pomona Freeway and west of Workman Mill Road, and blocks 109, 110, 201, and 218.
CT 4331—Portions not in Congressional District 30.
CT 4333—Portions not in Congressional District 30.
CT 4334—Portions not in Congressional District 30.
CT 4335—Portions not in Congressional District 30.
CT 4338—Portions not in Congressional District 30.
CT 4339—Portions not in Congressional District 30.
CT 4340—Portions not in Congressional District 30.
CT 5003—Block Group 1.
CT 5010—All except portions in the City of Whittier.
CT 5020.01—All except portions in the City of Whittier.
CT 5020.02—All except portions in the City of Whittier.
CT 5021—All except portions in the City of Whittier.
CT 5029.02—All except portions in the City of Whittier.
CT 5035.02—All except portions in the City of Whittier.
CT 5041.01—Portions in the City of Santa Fe Springs.

Congressional District 35: Congressional District 35 shall consist of the part of San Bernardino County not included in Congressional District 36, together with the part of Los Angeles County contained in the following whole and partial census tracts:

Whole Census Tracts:
CT 9001
CT 9002
CT 9004
CT 9101
CT 9105
CT 9106

Partial Census Tracts:

CT 9003—All except portions in the City of Lancaster.
CT 9005—Portions in the City of Palmdale.
CT 9100—Portions in the City of Palmdale and blocks 116, 202, 207, and Block Groups 3 and 4.
CT 9104—Block Group 4.
CT 9107—Portions in the City of Palmdale.

Congressional District 36: Congressional District 36 shall consist of the part of Riverside County contained in the following whole and partial census tracts:
Whole Census Tracts:
CT 301
CT 302
CT 303
CT 304
CT 305
CT 308
CT 309
CT 314.02
CT 315.02
CT 316
CT 401
CT 402
CT 403
CT 404
CT 405
CT 410
CT 411
CT 412
CT 422.02
CT 422.03
CT 423
Partial Census Tracts:
CT 310—Block Groups 5 and 6.
CT 313—All except blocks 302, 303, 309, 310, 319, 320, 321, 322, 323, and 324.
CT 314.01—All except blocks 304, 305, 306, 401, 402, 403, 404, 405, 406, and 407; and Block Group 5.

CT 315.01—All except blocks 101, 102, 103, 104, 105, 106, 109, 111, 112, 113, 114, and 115, and Block Group 2 excluding blocks 211 and 212.

CT 413—All except Block Group 2 and blocks 301, 302, and 303.

CT 422.04—Block Groups 1, 2, and 3, and block 906.

together with the part of San Bernardino County contained in the following whole and partial census tracts:

Whole Census Tracts:

CT 10
CT 11
CT 12
CT 14
CT 15
CT 16
CT 18
CT 23
CT 24
CT 25
CT 26
CT 28
CT 29
CT 30
CT 31
CT 32
CT 33
CT 34
CT 35
CT 36
CT 37
CT 38
CT 39
CT 40
CT 41
CT 42
CT 43
CT 44

CT 45
CT 46
CT 47
CT 48
CT 49
CT 50
CT 51
CT 52
CT 53
CT 54
CT 55
CT 56
CT 57
CT 58
CT 59
CT 60
CT 61
CT 62
CT 63
CT 64
CT 65
CT 66
CT 67
CT 68
CT 69
CT 70
CT 74.01
CT 75
CT 76
CT 77

Partial Census Tracts:

CT 3—Portions in the City of Ontario.
CT 4—Portions in the City of Ontario.
CT 6.01—Portions in the City of Ontario.
CT 13—Portions not in the City of Rancho Cucamonga.
CT 17—Portions in the City of Ontario.
CT 20—Portions in the City of Fontana.

CT 21—Portions in the City of Ontario.

CT 22—Portions in the cities of Fontana and Ontario.

CT 27—Portions in the City of Rialto, except for the noncontiguous portion.

CT 71—All except portions south of Fern Street and its southwesterly extension to an intersection within the city limits of Grand Terrace and portions in the City of Grand Terrace.

CT 72—All except portions in the City of Loma Linda and blocks 306, 307, 308, 324, 325, and 326; the unincorporated portions of Block Group 4; and the portions of block 401 in the City of Redlands.

CT 73—Portions in the cities of Colton and San Bernardino.

CT 74.02—All except the unincorporated portions of Block Groups 1 and 3, and Block Group 2, excluding blocks 202, 203, 204, 205, 207, and 211.

CT 79—Portions in the City of San Bernardino.

CT 101—Portions in the City of San Bernardino.

CT 102.02—Portions in the City of San Bernardino.

Congressional District 37: Congressional District 37 shall consist of the part of Riverside County not included in Congressional District 36.

Congressional District 38: Congressional District 38 shall consist of the part of Orange County contained in the following whole and partial census tracts:

Whole Census Tracts:

CT 741.01

CT 741.02

CT 741.03

CT 742

CT 743

CT 744.03

CT 745.01

CT 745.02

CT 746.01

CT 746.02
CT 747.01
CT 747.02
CT 748.01
CT 748.02
CT 748.03
CT 748.04
CT 749.01
CT 749.02
CT 750.02
CT 752.01
CT 752.02
CT 865.02
CT 868.02
CT 869.01
CT 869.02
CT 873
CT 874.02
CT 874.03
CT 877.03
CT 878.01
CT 878.02
CT 878.03
CT 878.05
CT 878.06
CT 879.01
CT 879.02
CT 880.01
CT 880.02
CT 881.01
CT 881.02
CT 881.03
CT 882.01
CT 882.02
CT 882.03
CT 883.01
CT 883.02

CT 884.01
CT 884.02
CT 884.03
CT 885.01
CT 885.02
CT 886.01
CT 886.02
CT 887.01
CT 887.02
CT 888
CT 889.01
CT 889.02
CT 889.03
CT 889.05
CT 890.01
CT 890.02
CT 891.01
CT 891.02
CT 891.03
CT 992.01
CT 997.01
CT 998.01
CT 998.02
CT 998.03
CT 999.02
CT 999.03
CT 999.04
CT 1100.03
CT 1100.04
CT 1100.05
CT 1102.01
CT 1102.03
CT 1103.02
CT 1103.03
CT 1104.01
CT 1104.02
CT 1105

CT 1106.03

Partial Census Tracts:

CT 740.03—All except blocks 209, 210, 211, 213, 214, 235, 243, and 244.

CT 740.05—All except blocks 108, 109, 110, 111, 118, 119, 120, 121, 127, 128, 129, 130, 131, 132, 133, 134, and 135.

CT 744.01—Portions south of Washington Avenue.

CT 744.04—Portions in the City of Santa Ana.

CT 750.01—Blocks 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, and 225.

CT 761.01—Blocks 604 and 605.

CT 761.03—Portions in the City of Garden Grove.

CT 863.01—Block Groups 2 and 3.

CT 863.03—Blocks 109, 111, 113, 126, 127, 128, 129, 131, 132, 201, 208, 214, 218, 219, and 220.

CT 865.01—Blocks 101, 102, 103, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 205, 206, 207, 208, 209, 210, 309, 311, 312, 313, and 314; and the portion of block 317 in the City of Anaheim.

CT 866.01—Portions in the City of Anaheim.

CT 868.01—All except portions in the City of Fullerton.

CT 868.03—The portion of Block 211 in the City of Anaheim.

CT 869.03—Portions south of Orange Avenue.

CT 870.01—Portions south of Orange Avenue.

CT 870.02—Portions south of Orange Avenue.

CT 871.04—Blocks 207, 208, 209, 210, 211, 212, 213, 214, 216, 217, 219, and 220.

CT 872—Block Group 2 and blocks 307, 308, and 309.

CT 874.01—Block Groups 1, 2, and 3, and block 409.

CT 875.01—Blocks 101, 102, 119, 121, 123, 127, 128, and 129.

CT 875.03—Portions in the City of Garden Grove and block 109.

CT 876.02—Portions west of Euclid Avenue and portion in the City of Garden Grove.

CT 877.01—Blocks 302, 303, 305, 306, 308, 309, and 310, and Block Group 4.
CT 877.04—Portions south of Cerritos Avenue.
CT 889.04—Portions not in Congressional District 42.
CT 992.02—Portions in the City of Santa Ana.
CT 992.03—All except portions in the cities of Fountain Valley and Westminster.
CT 996.01—Portions northeast of the 405 Freeway.
CT 997.02—Portions not in Congressional District 42.
CT 1100.01—Portions not in Congressional District 42.
CT 1100.10—Portions not in Congressional District 42.
CT 1101.02—Portions not in Congressional District 42.
CT 1101.10—Portions not in Congressional District 42.
CT 1101.13—Portions not in Congressional District 42.
CT 1102.02—Portions not in Congressional District 42.
CT 1103.01—Portions not in Congressional District 42.
CT 1103.04—Portions not in Congressional District 42.
CT 1106.01—Portions south of the Atchison, Topeka and Santa Fe Railroad,
together with the part of Los Angeles County contained in the following whole and partial census tracts:
Whole Census Tracts:
CT 5545.11
CT 5545.12
CT 5545.13
CT 5545.14
CT 5545.15
CT 5545.16
CT 5545.17
CT 5545.18
CT 5545.19
CT 5545.21
Partial Census Tract:
CT 5545.22—That portion in the City of Cerritos.

Congressional District 39: Congressional District 39 shall consist of the part of Orange County contained in the following whole and partial census tracts:

Whole Census Tracts:
CT 11.01
CT 11.02
CT 11.03
CT 12
CT 13.01
CT 13.02
CT 14.01
CT 14.02
CT 14.03
CT 14.04
CT 15.01
CT 15.02
CT 15.03
CT 15.04
CT 15.05
CT 16.01
CT 16.02
CT 17.01
CT 17.02
CT 18.01
CT 18.02
CT 19.01
CT 19.02
CT 19.03
CT 110
CT 111.01
CT 111.02
CT 112
CT 113
CT 114.01
CT 114.02
CT 115.01
CT 115.02
CT 116.01
CT 116.02
CT 117.07

CT 117.08
CT 117.09
CT 117.10
CT 117.11
CT 117.12
CT 117.13
CT 117.14
CT 117.15
CT 117.16
CT 117.17
CT 117.18
CT 218.02
CT 218.05
CT 218.06
CT 218.07
CT 218.08
CT 218.09
CT 218.10
CT 218.11
CT 218.12
CT 218.13
CT 219.03
CT 219.04
CT 219.05
CT 219.06
CT 219.07
CT 219.08
CT 219.09
CT 757.03
CT 758.02
CT 758.03
CT 758.04
CT 758.05
CT 758.07
CT 758.08
CT 758.09
CT 758.10

CT 759.01
CT 761.02
CT 762.01
CT 762.02
CT 762.04
CT 762.05
CT 762.06
CT 762.07
CT 762.08
CT 863.04
CT 863.05
CT 863.06
CT 864.02
CT 864.04
CT 864.05
CT 864.06
CT 864.07
CT 866.02
CT 867.01
CT 867.02
CT 871.01
CT 871.02
CT 871.03
CT 875.04
CT 876.01
CT 1106.04
CT 1106.05

Partial Census Tracts:

CT 756.01—All except that portion in the City of Tustin.

CT 756.02—All except that portion in the City of Tustin.

CT 757.02—All except that portion in the City of Tustin and blocks 204, 205, and 206.

CT 758.06—Portions in the City of Orange and blocks 101, 102, 103, 104, 105, 106, 107, 108, and 109.

CT 759.02—All except portions in the City of Santa Ana.

CT 760—All except portions in the City of Santa Ana.

CT 761.01—Portions not in Congressional District 38.

CT 761.03—Portions not in Congressional District 38.
CT 863.01—Portions not in Congressional District 38.
CT 863.03—Portions not in Congressional District 38.
CT 865.01—Portions not in Congressional District 38.
CT 866.01—Portions not in Congressional District 38.
CT 868.01—Portions not in Congressional District 38.
CT 868.03—All except portions in Congressional District 38.
CT 869.03—All except portions in Congressional District 38.
CT 870.01—All except portions in Congressional District 38.
CT 870.02—All except portions in Congressional District 38.
CT 871.04—All except portions in Congressional District 38.
CT 872—All except portions in Congressional District 38.
CT 874.01—All except portions in Congressional District 38.
CT 875.01—All except portions in Congressional District 38.
CT 875.03—All except portions in Congressional District 38.
CT 876.02—All except portions in Congressional District 38.
CT 877.01—All except portions in Congressional District 38.
CT 877.04—All except portions in Congressional District 38.
CT 877.04—All except portions in Congressional District 38.
CT 1106.01—All except portions in Congressional District 38.

Congressional District 40: Congressional District 40 shall consist of the part of Orange County not contained in Congressional Districts 38, 39, 42, and 43.

Congressional District 41: Congressional District 41 shall consist of the part of San Diego County contained in the following whole and partial census tracts:

Whole Census Tracts:

CT 2
CT 3
CT 4
CT 5
CT 6
CT 7
CT 8
CT 9
CT 10
CT 11
CT 12
CT 13
CT 20.01
CT 20.02
CT 28.01
CT 28.02
CT 29.01
CT 29.02
CT 55
CT 57
CT 59
CT 60
CT 61
CT 66
CT 68
CT 69
CT 70.01
CT 70.02
CT 71
CT 72
CT 73.01
CT 73.02
CT 74

CT 75
CT 76
CT 77
CT 78
CT 79.01
CT 79.02
CT 80.01
CT 80.02
CT 81.01
CT 81.02
CT 82
CT 83.01
CT 83.03
CT 83.05
CT 83.06
CT 83.07
CT 83.10
CT 83.11
CT 83.12
CT 83.13
CT 83.14
CT 83.15
CT 83.16
CT 83.17
CT 83.18
CT 83.19
CT 83.20
CT 83.21
CT 83.22
CT 83.23
CT 83.24
CT 85.01
CT 85.02
CT 85.03
CT 85.04
CT 85.05
CT 85.06

CT 85.07
CT 85.09
CT 85.10
CT 85.11
CT 85.12
CT 85.13
CT 87.01
CT 91.01
CT 91.02
CT 91.03
CT 91.04
CT 91.05
CT 92.01
CT 92.02
CT 93.01
CT 93.03
CT 94
CT 95.01
CT 95.02
CT 95.03
CT 95.04
CT 96.02
CT 96.03
CT 96.04
CT 97.03
CT 97.04
CT 97.05
CT 97.06
CT 98.01
CT 98.02
CT 98.04
CT 98.05
CT 99.01
CT 170.17
CT 170.18
CT 172
CT 173.01

Partial Census Tracts:

CT 1—All except blocks 407, 410, 501, 502, and 509.

CT 21—Block Group 1 and blocks 409, 410, 412, 413, 414, and 415.

CT 23—Blocks 101, 102, 103, 104, 105, 106, 107, 406, 407, and 408.

CT 56—All except blocks 306, 307, 308, 309, 310, 311, 322, 323, and 324.

CT 65—All except Block Groups 2 and 4 and block 506 and those portions of blocks 502 and 503 that are southeast of an extension of Enterprise Street from Pacific Coast Highway and the San Diego Freeway.

CT 87.02—All except blocks 108, 109, 110, 111, 112, 113, 127, and 128.

CT 89—Blocks 206, 207, 208, 209, 210, 211, 214, 215, 216, and 217.

CT 170.12—Portions not in Congressional District 45.

CT 170.13—Portions in the City of San Diego.

CT 170.14—Portions not in Congressional District 45.

CT 170.16—All except the unincorporated portions of blocks 304, 309, and 349.

CT 171.01—Portions in the City of San Diego.

CT 173.02—Portions in the City of San Diego and block 302.

CT 204—Portions in the City of San Diego.

Congressional District 42: Congressional District 42 shall consist of the part of Los Angeles County contained in the following whole and partial census tracts:

Whole Census Tracts:

CT 2961

CT 2974

CT 5552.02

CT 5715.02

CT 5719

CT 5720.01

CT 5734

CT 5735

CT 5739.01
CT 5739.02
CT 5746.02
CT 5747
CT 5748
CT 5750.01
CT 5756
CT 5757
CT 5760
CT 5761
CT 5766
CT 5767
CT 5772
CT 5773
CT 5774
CT 5775.01
CT 5775.02
CT 5776.01
CT 5776.02
CT 5776.03
CT 6504
CT 6505.02
CT 6506.01
CT 6506.02
CT 6506.03
CT 6507.01
CT 6507.02
CT 6508
CT 6511.01
CT 6511.02
CT 6512.01
CT 6512.21
CT 6512.22
CT 6513.01
CT 6513.02
CT 6514
CT 6700.01

CT 6700.02
CT 6700.03
CT 6701
CT 6702.01
CT 6702.02
CT 6703.01
CT 6703.02
CT 6704.01
CT 6704.02
CT 6705
CT 6706
CT 6707.01
CT 6707.02

Partial Census Tracts:

CT 2971—Blocks 115 and 119.

CT 2973—Blocks 307 and 308.

CT 2975—All except portions in Congressional District 32.

CT 2976—Block Groups 1 and 2, and blocks 301, 302, 303, 304, 305, 320, and 518.

CT 5718—All except blocks 115, 117, 120, 127, and 128.

CT 5720.02—Block Group 1 and blocks 201, 202, 203, 204, 205, 206, 207, 208, 303, 304, and 305.

CT 5745—All except portions in Congressional District 32.

CT 5749.02—All except blocks 101, 102, 103, 104, 105, 106, 206, and 207.

CT 5771—All except Block Group 5 and block 411.

CT 6505.01—Portions not contained in Congressional District 27 together with the part of Orange County contained in the following whole and partial census tracts:

Whole Census Tracts:

CT 992.04
CT 992.11
CT 992.22
CT 993.02

CT 993.03
CT 993.04
CT 993.05
CT 994.02
CT 994.04
CT 994.05
CT 994.06
CT 994.07
CT 994.08
CT 994.10
CT 994.11
CT 994.12
CT 994.13
CT 994.14
CT 994.15
CT 995.02
CT 995.03
CT 995.04
CT 995.05
CT 995.06
CT 995.07
CT 995.08
CT 996.02
CT 996.03
CT 996.04
CT 996.05
CT 997.03
CT 999.01
CT 1100.06
CT 1100.07
CT 1100.08
CT 1100.11
CT 1100.12
CT 1100.13
CT 1101.01
CT 1101.04
CT 1101.06

CT 1101.08
CT 1101.09
CT 1101.11
CT 1101.12
CT 1101.14
Partial Census Tracts:
CT 889.04—All except those portions in the City of Garden Grove and blocks 107, 108, 109, 117, 119, 120, and 126.
CT 992.03—That portion in the City of Westminster.
CT 992.23—Portions in the City of Westminster.
CT 992.35—All except blocks 118, 120, 121, 123, and 124.
CT 996.01—Portions not in Congressional District 38.
CT 997.02—All except blocks 101, 102, 103, 105, and 106.
CT 1100.01—Portions in the Cities of Cypress and Los Alamitos.
CT 1100.10—Portions in the City of Cypress.
CT 1101.02—Portions in the City of Cypress and La Palma.
CT 1101.10—Portions in the City of Cypress.
CT 1101.13—Portions in the Cities of Cypress and Los Alamitos.
CT 1102.02—Portions in the City of Cypress.
CT 1103.01—Portions in the City of La Palma.
CT 1103.04—Portions in the City of La Palma.

Congressional District 43: Congressional District 43 shall consist of the part of San Diego County contained in the following whole and partial census tracts:
Whole Census Tracts:
CT 171.02
CT 174.01
CT 174.02
CT 175
CT 176
CT 177

CT 178.01
CT 178.03
CT 178.04
CT 179
CT 180
CT 181
CT 182
CT 183
CT 183.99
CT 184
CT 185.01
CT 185.02
CT 185.04
CT 185.05
CT 185.06
CT 186.01
CT 186.03
CT 186.04
CT 186.05
CT 187
CT 188
CT 189.01
CT 189.02
CT 190
CT 191.01
CT 191.02
CT 192.01
CT 192.02
CT 193
CT 194
CT 195
CT 196
CT 197
CT 198
CT 199
CT 200.02
CT 200.03

CT 200.04
CT 200.05
CT 201.01
CT 201.02
CT 202.01
CT 202.02
CT 202.03
CT 202.04
CT 202.05
CT 203.01
CT 203.02
CT 203.03
CT 205
CT 206.01
CT 206.02

Partial Census Tracts:

CT 170.16—Portions not in Congressional District 41.
CT 171.01—Portions not in Congressional District 41.
CT 173.02—Portions not in Congressional District 41.
CT 204—Portions not in Congressional District 41.
CT 207.01—Portions not in Congressonal District 45.
CT 207.03—All except portions in the City of San Diego.
CT 207.04—Portions not in Congressional District 45.

together with the part of Orange County contained in the following whole and partial census tracts:

Whole Census Tracts:

CT 320.02
CT 320.03
CT 320.06
CT 320.08
CT 320.09
CT 320.10
CT 320.12
CT 320.13
CT 320.14
CT 320.15
CT 421.01

CT 421.02
CT 421.03
CT 421.04
CT 422.01
CT 422.02
CT 423.10
CT 423.11
CT 423.12
CT 423.13
CT 423.14
CT 524.11

Partial Census Tracts:

CT 320.07—All except Block Group 3 and blocks 237, 244, 252, 253, 254, 255, 256, 257, 258, 259, and 260.

CT 423.03—Portions in the City of San Juan Capistrano.

CT 524.08—Unincorporated portion southeast of the City of Irvine city limits except blocks 227, 314, 315, 316, 317, 318, and 325.

CT 524.09—All except blocks 135, 234, and 243.

CT 524.10—Unincorporated portions southeast of the City of Irvine city limits.

Congressional District 44: Congressional District 44 shall consist of the part of San Diego County not included in Congressional Districts 41, 43, and 45, including those tracts designating population on vessels which are not contained in Congressional Districts 41, 43, and 45.

Congressional District 45: Congressional District 45 shall consist of the following whole county:

Imperial

together with the part of San Diego County contained in the following whole and partial census tracts:

Whole Census Tracts:

CT 100.07
CT 101.04
CT 101.05
CT 102

CT 103
CT 104
CT 105
CT 106.01
CT 106.02
CT 106.03
CT 106.99
CT 107
CT 108
CT 109
CT 110
CT 111
CT 112
CT 113
CT 135.01
CT 135.02
CT 136.01
CT 136.02
CT 137
CT 138
CT 139.01
CT 139.02
CT 139.03
CT 145
CT 146
CT 147
CT 148.01
CT 148.03
CT 148.04
CT 149
CT 150
CT 151
CT 152
CT 153.01
CT 153.02
CT 154.02
CT 154.03

CT 154.04
CT 155
CT 156.01
CT 156.02
CT 157.01
CT 157.02
CT 158
CT 159
CT 160
CT 161
CT 162.01
CT 162.02
CT 163
CT 164.01
CT 164.02
CT 165.01
CT 165.02
CT 166.02
CT 166.03
CT 166.05
CT 166.06
CT 166.07
CT 166.08
CT 166.09
CT 166.10
CT 166.11
CT 167.01
CT 167.02
CT 168.02
CT 168.03
CT 168.04
CT 168.05
CT 169
CT 170.05
CT 170.06
CT 170.07
CT 170.08

CT 170.09
CT 170.10
CT 170.11
CT 170.15
CT 208
CT 209.01
CT 209.02
CT 210
CT 211
CT 212.01
CT 212.02
CT 213

Partial Census Tracts:

CT 32.04—All except portions in the City of National City and the unincorporated portions of blocks 125 and 203.

CT 32.07—All except portions in the City of Chula Vista.

CT 100.06—Blocks 536, 537, 538, 539, 540, 541, 542, and 543.

CT 133.05—All except portions in the City of Chula Vista and the unincorporated portion of block 124 surrounded by the City of Chula Vista.

CT 134.01—All except portions in the City of Chula Vista.

CT 134.03—All except portions in the City of Chula Vista and the unincorporated portion of block 313 surrounded by the City of Chula Vista.

CT 134.04—All except portions in the City of Chula Vista.

CT 170.12—Portions in the City of Poway.

CT 170.13—Portions not in Congressional District 41.

CT 170.14—Block Group 1 and blocks 201, 202, 210, and 211.

CT 207.01—Block 201.

CT 207.03—Portions not in Congressional District 43.

CT 207.04—All except those portions in the City of Escondido and the unincorporated portion of blocks 207, 208, 238, 305, and 306.

SEC. 4. Chapter 5 (commencing with Section 30040) of Division 18 of the Elections Code is repealed.

SEC. 5. Chapter 5 (commencing with Section 30040) is added to Division 18 of the Elections Code, to read:

CHAPTER 5. EQUALIZATION DISTRICTS

30040. The state is divided into four equalization districts designated and constituted as provided in this chapter in accordance with Section 1 of Article XXI of the Constitution.

For purposes of this chapter, any reference to "census tracts" means that demographic unit as established by the United States Bureau of the Census for the 1980 census, as described by maps and publications of the bureau.

30041. The First Equalizaton District shall consist of the following whole counties:

Alameda
Alpine
Amador
Butte
Calaveras
Colusa
Contra Costa
Del Norte
El Dorado
Glenn
Humboldt
Lake
Lassen
Marin
Mendocino
Modoc
Napa
Nevada
Place

Plumas
Sacramento
Santa Clara
Shasta
Sierra
Siskiyou
Solano
Sonoma
Sutter
Tehama
Trinity
Tuolumne
Yolo
Yuba

30042. The Second Equalization District shall consist of the following whole counties:

Fresno
Kings
Madera
Mariposa
Merced
Santa Barbara
San Benito
Santa Cruz
San Francisco
San Joaquin
San Luis Obispo
San Mateo
Stanislaus
Tulare
Ventura
Monterey

together with the part of Los Angeles County contained within the following whole census tracts:

1011 through 1436.02, inclusive; 1438.01 through 1439.02, inclusive; 2611.01 through 2674.02, inclusive; 2679; 2714; 2721; 2731 through 2739, inclusive; 3201 through

3203, inclusive; 7006 through 7023, inclusive; 8001 through 9203.23: inclusive; and 9302.

30043. The Third Equalization District shall consist of the following whole counties:

Imperial
Inyo
Kern
Mono
Orange
Riverside
San Bernardino
San Diego

30044. The Fourth Equalization District shall consist of the part of Los Angeles County not contained within the Second Equalization District.

SEC. 6. The districts provided for in Section 3 of this act shall be effective and operative for all purposes on and after the effective date of this act.

The Legislature finds and declares that for efficient administration of the tax laws of this state and service to the taxpayers of this state, the renumbering and revision of the boundaries of the Board of Equalization districts provided for in this act shall become operative on the effective date of this act. Pursuant to Section 3 of this act, the First Equalization District is revised and renumbered as the Second Equalization District; the Second Equalization District is revised and renumbered as the Third Equalization District; the Third Equalization District is revised and renumbered as the First Equalization District; the Fourth Equalization District is revised and continues to be numbered as the Fourth Equalization District.

The Legislature further finds and declares that the electors who chose a board member at the November 3, 1982, General Election will be adequately represented by a board member if these revised districts become effective, and that no voters shall have been disenfranchised by these revisions.

For purposes of Sections 15601, 15602, and 15623 of the Government Code, a member of the State Board of Equalization shall be deemed to be an inhabitant of the district for which the member is chosen if the member is an inhabitant of that district as revised and renumbered by this act.

SEC. 7. If any section or provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other sections or provisions or applications of the act which can be given effect without the invalid section, provision or application, and to this end the sections of this act and the provisions of the sections of this act are severable.

Supreme Court, U.S.
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No. 87-1818

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1987

ROBERT E. BADHAM, et al.,
Appellants,

VS.

MARCH FONG EU, et al.,
Appellees.

On Appeal From the United States District Court for the Northern District of California

MOTION OF THE ASSEMBLY OF THE STATE OF CALIFORNIA TO DISMISS OR AFFIRM

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MOTION OF THE ASSEMBLY OF THE STATE OF CALIFORNIA TO DISMISS OR AFFIRM

INTRODUCTION

In *Davis v. Bandemer*, 478 U.S. 109, 106 S.Ct. 2797 (1986), this Court held that under certain limited circumstances claims of partisan gerrymandering may be entertained. Although claims of partisan gerrymandering had for good reason long been considered questions for the political branches, the plurality was concerned that insular political groups might be so shut out of the political process that judicial intervention may be necessary to protect those who cannot protect themselves. In doing so, however, this Court made clear that its intent was to protect the powerless, not to create another tool for the powerful. It rejected the claims of Indiana Democrats and it repeatedly described the threshold requirements so as to make it plain that healthy major political parties must use the political process, not the courts.

Thus, this Court held that a group claiming.partisan gerrymandering must show that it has "essentially been shut out of the political process." *Davis v. Bandemer*, 106 S.Ct. at 2814. Plaintiffs must show that the "electoral system is arranged in a manner that will consistently degrade [their] influence on the political process as a whole;" they must show a "history of disproportionate results . . . in conjunction with strong indicia of lack of political power and the denial of fair representation." *Id.* at 2810, 2814.

It is not remarkable, therefore, that the three-judge district court below found that California Republicans could not meet those sensible threshold requirements in this challenge to California's congressional districts.

Forty percent of California's congressional delegation is Republican, as are half of its United States Senators. Nationally, Republicans hold forty-five percent of the United States Senate and forty percent of the House of Representatives. The President of the United States is a California Republican. California's popular Republican Governor is eligible for reelection in 1990 and would have veto power over any new districting plan. Moreover, in times when Republicans do not control the Governor's office, they can and do resort to the initiative and referendum process. In 1982 California Republicans sponsored a successful referendum petition to invalidate the previous congressional districting plan; they had the same opportunity to eliminate the plan at issue here and did not take it. These are not the weak and powerless that stand before the Court.

Plaintiffs' appeal to this Court is premature, for neither the dissenting opinion nor the judgment has been entered below. But more importantly, the appeal is utterly without merit. California Republicans have both proportional representation in the congressional delegation and enormous political power in all aspects of the political process. The appeal should be dismissed or the decision below summarily affirmed.

STATEMENT OF THE CASE

Appellants' statement of the case is devoted almost exclusively to a description of the allegations of their third amended com-

plaint. The complaint, of course, speaks for itself. It consists almost entirely of allegations pertaining to the process of enactment of A.B. 2X and the alleged methods of gerrymandering that were employed.[1] To the extent that discriminatory effects are alleged they are stated in conclusory terms, such as the claim that A.B. 2X serves to "dilute and persistently degrade Republican votes." As we demonstrate below, the complaint boils down to a much repeated claim that election results are disproportionate to vaguely defined Republican voting strength and that incumbents win elections. *See* Jur. St. at 6-7; Third Am. Complaint ¶¶ 19-21, 26-29, Jur. St. App. at 40a-44a, 47a-51a.

Appellants' statement of the case lacks a clear account of the history of the litigation or the evolution of their third amended complaint, both of which are pertinent to the district court's

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[1] Because this matter arises on a motion to dismiss, the allegations of the complaint are taken as true. It should be noted, however, that many of appellants' claims are contradicted by judicially noticeable facts. (*See* section I-D below regarding claims of disproportionate representation). For example, appellants attribute the Legislature's late-1982 enactment of A.B. 2X to the fact that George Deukmejian won the November 1982 gubernatorial election. They neglect to note that in that same November 1982 election an initiative measure to establish a reapportionment commission was on the ballot but was defeated. Before the vote on this initiative, legislative efforts at reapportionment made no sense. After the people rejected a reapportionment commission, prompt legislative action was necessary and appropriate both because of the demands of California's election schedule and because the Legislature did not wish to repeat the experience of the 1970s when proposed redistricting plans bounced back and forth between the Governor and the Legislature for years, culminating in a court-ordered plan because the Legislature and the Governor were unable to agree. *See Legislature v. Reinecke*, 10 Cal.3d 396, 399 (1973). Notably, in addition to A.B. 2X (the congressional plan at issue here), *bipartisan* plans for the state Senate and Assembly, with broad support from state legislators of both parties, were also enacted in late 1982 and signed by Governor Brown shortly before he left office. *See* Cal. Elections Code, §§ 30010, 30011, 30020, 30021, 30022; Cal. Stats. 1983-84, 1st Ex. Sess., ch. 8, §§ 4, 6, 8; Cal. Const., art. IV, § 8(d).

decision to dismiss this case with prejudice. We therefore set forth that history of the case here.

Plaintiffs filed their original complaint on March 4, 1983, challenging A.B. 2X—California's congressional redistricting plan—on federal grounds and on three independent state law grounds. Plaintiffs' first amended complaint, filed March 31, 1983, added a fourth state law claim. The four state law claims were (1) that technical corrections to A.B. 2X violated the California Constitution;[2] (2) that the Legislature in enacting A.B. 2X violated California's constitutional "three-reading rule"; (3) that A.B. 2X was not substantially different from the 1981 redistricting plan which had been rejected by the California voters; and (4) that A.B. 2X did not comport with state constitutional standards regarding division of cities and counties and the like.

For the next two years plaintiffs resisted the three-judge district court's determination that under *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941), the state courts should resolve the potentially dispositive state law claims in the first instance.[3] Finally, in June 1985, plaintiffs agreed to drop all state

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[2] Administrative corrections to both legislatively enacted and court ordered redistricting plans are a common occurrence in California. *See, e.g., Assembly v. Deukmejian*, 30 Cal.3d 638, 666 n.21 and 22 (1982); *Legislature v. Reinecke, supra*, 10 Cal.3d at 401; *Legislature v. Reinecke*, 6 Cal.3d 595, 604 n.3 (1972); *Silver v. Brown*, 63 Cal.2d 841, 846 (1966).

[3] Plaintiffs unsuccessfully sought two emergency writs in the Ninth Circuit to overturn the district court's abstention orders. They also unsuccessfully petitioned for certiorari in this Court. *Badham v. United States District Court*, 470 U.S. 1084 (1985). They actively resisted and delayed a state superior court suit brought by the Democratic Congressional Delegation seeking declaratory relief on the state law claims. They eventually asked the California Supreme Court to resolve the state law issues on an extraordinary writ, but demanded that it do so within thirty days. It refused. At one point, the district court, apparently frustrated with plaintiffs' maneuvers, found that they had not acted in good faith. *See Badham v. United States District Court*, Supreme Court Case No. 84-1226, appendix to Petition for Certiorari at 11a-14a.

law claims and the district court, at plaintiffs' request and without objection from defendants, lifted its abstention order and proceeded on plaintiffs' federal claims.

By that time this Court had before it *Davis v. Bandemer*, 478 U.S. 109, 106 S.Ct. 2797 (1986), which was set for argument on October 7, 1985, and which plaintiffs said presented an alleged gerrymander comparable to A.B. 2X. *See, e.g.*, Petition for Certiorari in *Badham v. United States District Court*, case No. 84-1226, at 6, 23 (claiming *Davis* and *Badham* are "remarkably similar" with "striking" parallels). The three-judge district court stayed all proceedings pending this Court's decision in *Davis v. Bandemer*.

After the decision in *Davis*, the three-judge district court ordered the parties to submit memoranda regarding the impact of *Davis v. Bandemer* and *Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752 (1986), on the instant case. A status conference was held on September 19, 1986.

At the status conference, the district court called upon plaintiffs to file a third amended complaint alleging, to the best of their ability, the required elements for a cause of action under *Davis v. Bandemer*. It also set a schedule for filing of and briefing on motions to dismiss. Motions to dismiss were heard on December 5, 1986. At that time, plaintiffs' request to file a further amendment adding all of the Republicans in the California Congressional Delegation as plaintiffs was granted. The amendment was filed on January 13, 1987.

On April 21, 1988, a memorandum opinion and order was filed. Judge Poole, with Judge Zirpoli concurring, wrote the lead opinion determining that the third amended complaint failed to state a cause of action and should be dismissed with prejudice. Jur. St. App. at 2a *et seq.* Judge Zirpoli also wrote a separate concurring opinion noting that he was bound by the plurality opinion in *Davis v. Bandemer*, and implying that he doubted the justiciability of political gerrymandering claims. Jur. St. App. at 25a. Judge Schnacke noted his dissent and added: "A statement of my reasons will be filed in due course." Jur. St. App. at 26a. Neither the dissenting opinion nor the judgment has yet been

filed. *See* district court docket sheet lodged herein by appellants on or about May 16, 1988.

On April 28, 1988, plaintiffs filed their Notice of Appeal to the Supreme Court of the United States purporting to appeal from "the final judgment of the three-judge district court entered on April 21, 1988." Jur. St. App. at 29a. Subsequently, on May 4, 1988, plaintiffs filed their jurisdictional statement.[4] On May 23, 1988 this Court denied plaintiffs' motion to expedite consideration of their appeal.

ARGUMENT

I

THE DISTRICT COURT PROPERLY APPLIED *DAVIS v. BANDEMER* IN DISMISSING PLAINTIFFS' CLAIMS OF PARTISAN GERRYMANDERING

Appellants suggest that the question presented in this case is whether their challenge to California's congressional districts is "barred" by the fact that Republicans exercise political influence in "another jurisdiction or level of government." Jur. St. at i (Questions Presented). They accuse the district court of "rendering this Court's decision in *Davis v. Bandemer* a nullity" and say that it closed its eyes to "the egregious discriminatory effects" set forth in their complaint. *Ibid.* This is an entirely inaccurate

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[4] Because no judgment has been entered below, and Judge Schnacke's dissenting opinion has not yet been issued, plaintiffs' appeal is premature, and this Court is without jurisdiction. *See Goldstein v. Cox*, 396 U.S. 471, 477 (1970) (appeal proper under 28 U.S.C. § 1253 only from (1) final judgment granting or denying permanent injunction, or (2) interlocutory order granting or denying preliminary injunction); *see also Gunn v. University Committee to End the War in Viet Nam*, 399 U.S. 383, 386-91 (1970) (dismissing appeal for lack of jurisdiction because, even though district court had found plaintiffs were entitled to injunction, no final injunction had yet been entered); *cf. Schmidt v. Lessard*, 414 U.S. 473, 475 (1974) (distinguishing *Gunn* on the ground that "there was in the present case a judgment entered 'in accordance with the Opinion' ").

description of the district court's opinion and of the record in this case.

The district court carefully and faithfully applied the plurality opinion in *Davis v. Bandemer*. Plaintiffs' third amended complaint alleges nothing more than disproportionate election results, which, even when persistent over time, have never been sufficient to support a gerrymandering claim under *Davis v. Bandemer* or the racial gerrymandering cases that preceded it.

Moreover, the fact is that Republicans in California enjoy proportional representation in the congressional delegation and have for years. Plaintiffs' assertions to the contrary are based upon a demonstrably misleading definition of "Republican voters" and flawed analysis of election results.

Finally, even if Republicans did not have proportional representation, their substantial political power and participation in all relevant state and federal arenas, including Congress and the California congressional delegation, make it impossible for these plaintiffs to state a cognizable claim of partisan gerrymandering.

A. The District Court Was True to Davis v. Bandemer

In *Davis v. Bandemer*, this Court for the first time opened the door to judicial review of partisan gerrymandering claims but held that the Indiana state legislative districts were not unconstitutional. Three members of the Court concurred on the grounds that political gerrymandering claims are nonjusticiable.[5] *See Davis v. Bandemer*, 106 S.Ct. at 2816 (O'Connor, J., concurring). Even the plurality, in allowing for limited judicial review, recognized that redistricting is a delicate political process into which the judiciary should venture cautiously, if at all, based on claims of partisan vote dilution. *See Davis*, 106 S.Ct. at 2811 (redistricting is "a political task for the legislature, a task that should not be

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[5] *Davis v. Bandemer* does not necessarily require a finding of justiciability here. The problems of political policy and lack of manageable standards that the Court addressed in the context of state legislative districts in *Davis* are much greater in the congressional context. We defer to the discussion of justiciability to be submitted by appellee the California Democratic Congressional Delegation.

monitored too closely unless the express or tacit goal is to effect its removal from legislative halls"); *id.* at 2816 (Court recognizes "the delicacy of intruding on this most political of legislative functions"); see also *id.* at 2817 (O'Connor, J., concurring) ("the legislative business of apportionment is fundamentally a political affair").

Awareness of these concerns led the *Davis* plurality to take precautionary steps: at the threshold, plaintiffs must make a "prima facie" case consisting of "allegations and proof that the challenged legislative plan has had or will have effects that are sufficiently serious to require intervention by the federal courts in state reapportionment decisions." *Id.*, 106 S.Ct. at 2811 (emphasis added).[6] The Court did not wish to extend an open invitation to litigation. Instead, it expressly discouraged partisan gerrymandering claims. *See ibid.*; O'Connor concurrence *passim.*[7] Thus

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[6] The plurality's approach in setting a high threshold requirement for relief is not necessarily as distant from the concurring justices' position of nonjusticiability as might at first appear. "[J]usticiability concerns . . . 'shade into those determining whether the complaint states a sound basis for equitable relief.' " *Ramirez de Arellano v. Weinberger*, 745 F.2d 1500, 1562 (D.C. Cir. 1984) (en banc) (Scalia, J., dissenting), quoting *O'Shea v. Littleton*, 414 U.S. 488, 499 (1974), *vacated* 421 U.S. 957 (1985).

[7] Most claims of partisan gerrymandering will fail the *Davis* test. This is particularly true of claims brought by the major political parties. *See Davis v. Bandemer, supra*, 106 S.Ct. at 2806 ("That the characteristics of the complaining group are not immutable or that the group has not been subject to the same historical stigma may be relevant to the manner in which the case is adjudicated, but these differences do not justify a refusal to enter such a case"). *See also id.* at 2810 n.12; *id.* at 2813 ("it could hardly be said that Democrats, any more than Republicans, are excluded from" the nomination process); *id.* at 2820 (O'Connor, J., concurring). Judicial refusal to intervene for Democrats or Republicans in swing states like Indiana and California is not a product of the decision below (*cf.* Jur. St. at 20-22), it is a product of the strict standards that this Court established in *Davis*. Nor should this result cause any concern. It is merely a reflection of the fact that the ebb and flow of political power between the two major parties allows them to

Davis requires that at the outset plaintiffs make a "heightened" showing of discriminatory effect. *Id.* at 2815 n.19.

Having established the requirement of a heightened showing, the *Davis* plurality explained the nature of the showing that must be made:

- that the group has been "denied its chance to effectively influence the political process" (106 S.Ct. at 2810);
- that there is a "lack of responsiveness by those elected to the concerns of the relevant groups" (*ibid.*);
- that "a history of disproportionate results appear[s] in conjunction with strong indicia of lack of political power and the denial of fair representation" (*id.* at 2814);
- that the plaintiffs have "essentially been shut out of the political process" (*ibid.*);
- that the "electoral system is arranged in a manner that will consistently degrade [their] influence on the political process as a whole" (*id.* at 2810, 2815-16).

Appellants, perhaps because their third amended complaint alleges none of these elements except disproportionate election results, would rewrite *Davis* to say that allegations of persistent disproportionate election results are sufficient to meet the heightened effects requirement. *See* Jur. St. at 18-20. They are answered and their argument rejected not only by *Davis* but by the body of jurisprudence developed in racial gerrymandering cases as well:

> [T]he power to influence the political process is not limited to winning elections. . . . This is true even in a safe district where the losing group loses election after election. Thus, a group's electoral power is not unconstitutionally diminished by the simple fact of an apportionment scheme that makes winning elections more difficult, and a failure of proportional

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look after their own interests without judicial intervention in what is an essentially political process.

> representation alone does not constitute impermissible discrimination under the Equal Protection Clause.
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> *Davis v. Bandemer, supra*, 106 S.Ct. at 2810.

See also id. at 2812, 2815; *Whitcomb v. Chavis*, 403 U.S. 124, 153 (1971) (it is not a denial of equal protection "to deny legislative seats to losing candidates, even in those so-called 'safe' districts where the same party wins year after year").[8] The court below properly construed *Davis* as requiring it to look beyond election results to determine whether plaintiffs had fairly pled inability to influence the political process. Jur. St. App. at 9a-11a.

Appellants ignore most of the district court's analysis and argue that the court erred because it "relied almost exclusively on this Court's statement in *Bandemer* that: [¶] [U]nconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence on the political process as a whole." Jur. St. at 11 (quoting *Davis*, 106 S.Ct. at 2810.) That is, of course, what this Court said in *Davis v. Bandemer*. But the district court did not rely exclusively on this statement in the plurality opinion. Rather, any fair reading of the district court's opinion demonstrates that it took the *Davis* decision as a whole and faithfully applied its letter and spirit.

The district court did not, as appellants suggest, ignore congressional election results in its analysis. Nor did it conclude, as appellants contend, that "appellants' right to fair and effective representation in Congress is irrelevant." Jur. St. at 12. Rather, the district court ruled—as *Davis* mandates—that election results standing alone are not dispositive. Thus it looked not only at election results but also at whether plaintiffs had alleged " 'strong indicia of lack of political power and the denial of fair representa-

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[8] In racial gerrymandering cases, courts have held that even a total absence of minority representatives over many years is insufficient to support a constitutional challenge without other indicia of a lack of political power and denial of fair representation. *See* section I-C below.

tion.' "[9] Jur. St. App. at 12a (quoting *Davis v. Bandemer*, 106 S.Ct. at 2814). It looked at Republican influence specifically in the House of Representatives and the Congress. *Id.* at 13a, 17a.[10] It looked at California Republicans' ability to influence—and to overturn by referendum—California's congressional redistricting plans in the 1980s. *Id.* at 17a-18a. And, as *Davis v. Bandemer* requires, it looked at the political process as a whole and concluded that "California Republicans represent so potent a political force that it is unnecessary for the judiciary to intervene, as we would be constrained to do to protect the trampled rights of a disadvantaged political or racial minority." *Id.* at 17a.

The legal standard that the district court employed was the standard announced in *Davis v. Bandemer*. As we demonstrate below, the district court was correct in concluding that application of that legal standard in this case required dismissal of the complaint with prejudice.

B. Plaintiffs' Third Amended Complaint Alleges No Discriminatory Effects Other Than Disproportionate Election Results

The court below found that the discriminatory effects alleged by plaintiffs in their third amended complaint amounted to disproportionate election results and nothing more. The court specifically addressed plaintiffs' argument, repeated here, that they had alleged "other invidious effects":

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[9] Because plaintiffs' third amended complaint was deficient in other critical respects, the district court found it unnecessary to resolve whether plaintiffs in fact enjoy proportional representation in the congressional delegation.

[10] As the district court said:

> Chief among our observations is our undisputed knowledge that California Republicans still hold 40% of the congressional seats, a sizeable bloc that is far more than mere token representation. It simply would be ludicrous for plaintiffs to allege that their interests are being 'entirely ignore[d]' in Congress when they have such a large contingent of representatives who share those interests.
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> Jur. St. App. at 17a.

> [A]ll of the alleged "other invidious effects" are merely different ways of repeating [the] central allegation that A.B. 2X causes disproportionate election results. The language "discrimination based on political association" *might* be considered to allege an effect of the kind needed, but this single statement is conclusory and it is not supported by any other inference-generating facts alleged in the complaint.
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> Jur. St. App. at 14a.[11]

A review of the third amended compaint fully supports the district court's analysis. The bulk of the complaint—and much of appellants' jurisdictional statement—is devoted to detailed allegations pertaining to legislative intent and justification, issues which need not be reached unless the requisite discriminatory effect is shown. *Davis*, 106 S.Ct. at 2813-15. Viewing the complaint in the light most favorable to plaintiffs, the allegations of discriminatory effect are limited to the following:

1. Plaintiffs assert a discriminatory effect in that the number of congressional seats in the California delegation won by Republicans since 1981 has been and through the 1980s will remain "grossly disproportionate" to the statewide cumulative vote for Republican congressional candidates. Third Am. Complaint, ¶ 20, Jur. St. App. at 41a. This same allegation is made over and over, in different words, throughout the third amended complaint, but it all boils down to the same allegation of disproportionate votes-to-seats ratio. For example, paragraph 3 alleges:

> Assembly Bill 2X operates to minimize or cancel out [plaintiffs'] votes and voting strength. Plaintiffs' votes are persistently degraded and diluted . . . [P]laintiffs do not have the same opportunity to elect candidates of their choice . . . as do Democrats; in fact their opportunity to do so is decidedly diminished . . . .
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> Third Am. Complaint, ¶ 3, Jur. St. App. at 33a.

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[11] The court noted plaintiffs' further allegation that the allegedly "bizarre and irregular" shapes of the districts cause voter confusion and apathy. However, it also noted that the district shapes affected all congressional representatives, not just Republicans, and that similar

Similarly, paragraph 20 alleges:

> A.B. 2X is . . . designed and functioning to dilute, minimize and/or cancel out the votes and voting strength of Republican voters. . . . [It] allocate[s] congressional districts to Democrats in numbers far in excess of Democratic voting strength and to Republicans in numbers far below Republican voting strength. The effect is to control and distort the composition of California's Congressional Delegation throughout the 1980s. [It] locks in grossly disproportionate election results . . . [and results in] destruction of Republican incumbencies, the wasting of Republican votes, the minimization of Republican voters' opportunity to elect congressmen of their choice, the systematic elimination of political competition . . . .
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> Third Am. Complaint, ¶ 20, Jur. St. App. at 41a.[12]

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claims had been rejected by this Court in *Davis v. Bandemer*. Jur. St. App. at 14a. Plaintiffs' assertions of voter apathy are, at best, the sort of generalized grievances that this Court has consistently declined to review. *See Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 485-86 (1982); *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 219-27 (1974).

[12] We do not here repeat every variation of the plaintiffs' disproportionality allegation. The quotations in the text and the following are its principal reappearances:

> The A.B. 2X districts will result in the persistent degradation of Republican voting strength and dilution of Republican votes both statewide and district-by-district throughout this decade.
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> Third Am. Complaint, ¶ 21, Jur. St. at 41a.
>
> As a result of A.B. 2X, Republican voters, including plaintiffs, individually and as a group are substantially disadvantaged in their opportunity to influence effectively the political process in the election of members of the United States House of Representatives and their votes are diluted and made less effective than the votes of Democrats. . . . The effect of A.B. 2X is to divide up the State's congressional districts in such a way as to allocate a substantial and permanent majority of seats to Democratic party candidates in percentages far superior to the statewide voting strength of Demo-

2. Plaintiffs also claim that "[e]ntrenched Democratic incumbents will continue to be reelected without need to attend to the views of fragmented and submerged Republican minorities in their districts and are insulated from those views by their overwhelming margins of victory." Third Am. Complaint, ¶ 28, Jur. St. App. at 50a.[13] Notably absent is any allegation that Democratic incumbents are, in fact, not responsive to the needs of their Republican constituents. Nor do plaintiffs suggest that their interests are inadequately represented by the eighteen Republican members of the California congressional delegation and the other Republican members of the House. *Compare Davis v. Bandemer, supra*, 106 S.Ct. at 2810 ("We cannot presume . . . without actual proof to the contrary, that the candidate elected will entirely ignore the interests of [minority party] voters. This is true even in a safe district where the losing group loses election after election") *with Rogers v. Lodge*, 458 U.S. 613, 625 (1982) (elected officials had been "unresponsive and insensitive to the needs of the black community") and *White v. Regester*, 412 U.S. 755, 767 (1971) (majority political organization "did not need the support of the Negro community to win elections . . . and it did not therefore exhibit good-faith concern for the political and other needs and aspirations of the Negro community").[14]

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cratic votes thereby maximizing the efficiency of Democratic votes and wasting Republican votes and rendering them ineffective.
Third Am. Complaint, ¶ 26, Jur. St. App. at 47a-48a.

[13] In a variation on this theme, plaintiffs allege that A.B. 2X resulted in "the systematic elimination of political competition" in California's congressional races. Third Am. Complaint, ¶ 20, Jur. St. App. at 41a; *see* Jur. St. at 8. This allegation contributes nothing toward making the high threshold showing required by *Davis v. Bandemer*, this Court has indicated no preference, let alone a requirement, for competitive districts. *Davis v. Bandemer*, 106 S.Ct. at 2809; 2814-15; *Gaffney v. Cummings*, 412 U.S. 735, 738, 752-54 (1973); *Whitcomb v. Chavis, supra*, 403 U.S. at 153.

[14] In *Washington v. Finlay*, 664 F.2d 913, 923 (4th Cir. 1981), *cert. denied*, 457 U.S. 1120 (1982), the Fourth Circuit, reviewing allegations of racial discrimination, described the element of unresponsiveness as follows:

In summary, then, the full extent of plaintiffs' allegations of discriminatory effect is that election results are and throughout the decade will remain "grossly disproportionate" and that incumbents will ordinarily win reelection.[15] Such allegations are utterly insufficient to state a claim for relief.

> [T]he mere fact that a particular apportionment scheme makes it more difficult for a group in a particular district to elect the representatives of its choice does not render that scheme constitutionally infirm. This conviction, in turn, stems from the perception that *the power to influence the political process is not limited to winning elections.*
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> *Davis v. Bandemer, supra,* 106 S.Ct. at 2810 (emphasis added).

The courts "have found equal protection violations only where a history of disproportionate results appeared *in conjunction with strong indicia of lack of political power and the denial of fair representation.*" *Davis, supra,* 106 S.Ct. at 2814 (emphasis added). Plaintiffs' third amended complaint does not even begin to address these fundamental elements of a claim.

> [Plaintiffs must show] a degree of unresponsiveness to the needs and interests of the black minority so palpable that it compels—or even fairly supports—an inference that the minority's "voting potential" has been so effectively "cancelled out" that its residual "political strength" is presently being disregarded with confident impunity by the city's governing body.

[15] It is true that in paragraph 21 of the third amended complaint, plaintiffs make various allegations regarding the configuration of the districts and alleged gerrymandering techniques and label these "[t]he methodology and effects of the A.B. 2X gerrymander." Jur. St. App. at 41a-44a; *see also* Jur. St. at 7. This Court, however, has firmly rejected such attempts to obscure the issues by lumping various factors such as methodology and effects together:

> This undifferentiated consideration of the various factors confuses the import of each factor and disguises the essential conclusion of JUSTICE POWELL's opinion: that disproportionate election results alone are a sufficient effect to support a finding of a constitutional violation.
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> *Davis v. Bandemer, supra,* 106 S.Ct. at 2815.

C. Plaintiffs' Claims Do Not Even Approach the Level of Discriminatory Effects That Have Been Required in Racial Gerrymandering Cases

This Court in *Davis v. Bandemer* and the three-judge district court below used racial gerrymandering cases for purposes of analogy. *Davis v. Bandemer, supra,* 106 S.Ct. at 2809, 2810 n.12; Jur. St. App. at 18a-19a. The court below rightly found that even a "quick comparison with the facts of the racial gerrymandering cases on which *Bandemer* was based demonstrates the distance of the Republicans from alleging a claim." Jur. St. App. at 18a. *Cf.* Jur. St. at 14 (Appellants attack district court's analysis as "both incomplete and inappropriate").

Plaintiffs cannot credibly argue, for example, that their case approaches the complaint of Blacks in *Rogers v. Lodge,* 458 U.S. 613 (1982), who constituted 38% of the voters but had never won a single seat; or the Blacks in *Mobile v. Bolden,* 446 U.S. 55 (1980), who constituted one-third of the electorate but had likewise never won a seat. *See* Jur. St. App. 18a-19a. Nor is the claim here like the Voting Rights Act claim in *Thornburg v. Gingles,* 478 U.S. 30, 106 S.Ct. 2752 (1986). In that case the Court emphasized that "minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process" (106 S.Ct. at 2764), and relied upon findings that Black voters enjoyed "only minimal and sporadic success in electing representatives of their choice," and that what success they did enjoy was due to "aberrational" circumstances. *See id.* at 2762, 2771, 2772 n.29; *see also id.* at 2794 (O'Connor, J., concurring).

The district court limited its discussion to cases in which this Court has upheld racial gerrymandering claims. A comparison of the instant case with race cases in which this Court and lower courts have rejected gerrymandering claims makes the weakness in plaintiffs' complaint even more evident. Thus, in *Whitcomb v. Chavis, supra,* 403 U.S. 124, this Court rejected a claim of racial gerrymandering based upon much more persuasive allegations than those here. The Court drew a sharp distinction between election results and the degradation of political influence:

> The voting power of ghetto residents may have been "cancelled out" as the District Court held, but this seems a mere euphemism for political defeat at the polls.
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> 403 U.S. at 153.[16]

Even the most extreme and longstanding disproportionate election results have been held insufficient to support constitutional gerrymandering claims when courts were not convinced of the plaintiffs' inability to influence the broader political processes. *See Leadership Roundtable v. City of Little Rock*, 499 F.Supp. 579 (E.D. Ark. 1980), *aff'd*, 661 F.2d 701 (8th Cir. 1981) (only three Black candidates had won contested elections in Little Rock, Arkansas since 1957, but court held Blacks had equal opportunity to participate in the political process); *Washington v. Finlay, supra*, 664 F.2d 913 (no constitutional violation when, although no Black had ever been elected to the city council, there was substantial Black employment in city jobs, allocation of federal grants to the Black community, equal provision of essential services, and some Blacks held appointed offices in city and county government); *Aranda v. Van Sickle*, 600 F.2d 1267 (9th Cir. 1979), *cert. denied*, 446 U.S. 951 (1980) (Hispanics not denied equal access to the political process even though only three Hispanics had been elected to city council since 1911); *Blacks United for Lasting Leadership, Inc. v. City of Shreveport*, 571 F.2d 248 (5th Cir. 1978) (district court finding of constitutional violation reversed even though the only Black who ever ran for office was soundly defeated); *Nevett v. Sides*, 571 F.2d 209, 227 (5th Cir. 1978), *cert. denied*, 446 U.S. 951 (1980) ("blacks have not had the door completely closed in their faces in so far as expressing their opinions at city council meetings, in seeking

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[16] Applying this distinction to the Indiana Democrats, the *Davis* Court said:

> For constitutional purposes, the Democratic claim in this case, insofar as it challenges *vel non* the legality of the multi-member districts in certain counties, is like that of the Negroes in *Whitcomb* who failed to prove a racial gerrymander, for *it boils down to a complaint that they failed to attract a majority of the voters in the challenged multi-member districts.*
>
> *Davis, supra*, 106 S.Ct. at 2813 (emphasis added).

assistance, presenting petitions, being heard, and on some occasions being given what amounts to private audiences . . . some of these requests have gotten answers . . . there has not been a total lack of responsiveness merely because there were no blacks on the city council"); *Black Voters v. McDonough*, 565 F.2d 1 (1st Cir. 1977) (no constitutional violation despite the fact that in all but two elections since 1971 Black candidates were nominated for the school board, campaigned aggressively, qualified to run in the final election, but were never elected); *Romero v. City of Pomona*, 665 F.Supp. 853 (C.D. Cal. 1987) (rejecting Voting Rights Act claim even though only two Hispanics and no Blacks had been elected to the city council since 1888); *Houston v. Haley*, 663 F.Supp. 346 (N.D. Miss. 1987) (holding that political process was equally open to participation by Blacks even though no Black had ever served as mayor or been elected alderman).

The partisan claim presented here can be sustained only if this Court is willing to prefer political parties over racial minorities and close its eyes to the treatment and judicial standards that racial minorities have met when raising claims of racial gerrymandering. The *Davis* plurality specifically embraced the analogy to racial cases and held that "the principles developed in these cases would apply equally to claims by political groups in individual districts." 106 S.Ct. at 2810 n.12. It did so with full knowledge that political groups would have difficulty presenting a viable claim:

> We note, however, that the elements necessary to a successful vote dilution claim may be more difficult to prove in relation to a claim by a political group. For example, historical patterns of exclusion from the political processes, evidence which would support a vote dilution claim, are in general more likely to be present for a racial group than for a political group.
>
> *Id.*

In *Davis*, the Court not only imposed on political parties the demanding standards developed in race cases, it added a requirement, applicable solely to *partisan* claims, and designed to *increase* the burden on political parties seeking judicial intervention. In partisan cases and only in partisan cases, the plaintiffs must at

the threshold make a "heightened" showing of discriminatory effect. 106 S.Ct. at 2815 n.19. The plaintiffs in this case, who hold 40% of the California congressional delegation and have enormous power to influence the political processes, are unable to meet this "heightened" showing requirement or even the established elements essential to a gerrymandering claim.

D. California Republicans Are In Fact Proportionally Represented in the Congressional Delegation

Even analyzing plaintiffs' case in terms of proportional representation, they have no claim. Thirty-eight percent of California's registered voters are Republicans; forty percent of California's congressional delegation are Republicans.

1. Plaintiffs' Claims of Disproportionality Are Based on a False Measure

Plaintiffs ignore registration figures and turn to the statewide votes-to-seats ratio to demonstrate disproportionality.[17] The votes-to-seats ratio lumps together votes from the 45 congressional districts, treating the total number of votes cast for all Republican congressional candidates as an aggregate and the total number of votes cast for all Democratic candidates as an aggregate.

The analytical flaws in using statewide votes-to-seats ratios to assess outcomes in single member winner-take-all districts are manifold, and the results will virtually always be substantially disproportionate.[18] *See* Cain, *Simple vs. Complex Criteria for*

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[17] Plaintiffs cite the statewide aggregate figures from 1982, 1984 and 1986. Third Am. Complaint, ¶ 26, Jur. St. App. at 47a-49a; Jur. St. at 8-9. The 1982 elections were not held under A.B. 2X, but under a prior plan implemented by a unanimous vote of the California Supreme Court. *Assembly v. Deukmejian*, 30 Cal.3d 638, 664 (majority), 679 (Richardson, J., concurring & dissenting, with Mosk, J. and Kaus, J., concurring), *appeal dismissed sub nom. Republican National Committee v. Burton*, 456 U.S. 941 (1982).

[18] For example, plaintiffs' third amended complaint endorses, as a prototype of fair districting, the congressional districts used in California in the 1970s and developed by court-appointed masters. *See* Third Am.

Partisan Gerrymandering: A Comment on Niemi and Grofman, 33 U.C.L.A. L. Rev. 213, 216-17 (1985); Note, *The Constitutional Imperative of Proportional Representation,* 94 Yale L.J. 163, 164 n.4, 172 (1984); Grofman, *For Single Member Districts Random Is Not Equal,* in Representation and Redistricting Issues (1982) 55; Dixon, *The Court, The People and "One Man, One Vote",* in Reapportionment in the 1970s (N. Polsby, ed., 1971) 13; De Grazia, *Public and Republic: Political Representation in America* (1951) 187.

The Court need not at this stage of the proceedings concern itself with the full range of problems with using the votes-to-seats ratio, because two immediately apparent flaws in this measure of proportionality demonstrate the fallacy of plaintiffs' argument.

First, the votes-to-seats ratio treats the 45 separate district elections and the many individual candidates as though they were a single statewide election between the Democratic Party and the Republican Party. It fails to take account of varying voter turnout among the districts or of the individual strengths and weaknesses of the candidates and their campaigns.

Complaint, §§ 19, 25, Jur. St. App. at 40a, 47a; *Legislature v. Reinecke,* 10 Cal.3d 396 (1973). The votes-to-seats ratios under the 1970s districts are, however, very comparable to those in the 1980s. In 1982 and 1984, the margin of disproportionality was between 9% and 10%; in 1986 it was about 6%. By comparison, in 1974, the first year under the Masters Plan, there was a 6.1% disproportionality; Republican candidates took 41% of the statewide vote but only 34.9% of the congressional seats. In 1976, they received 43.2% of the statewide vote but lost a seat, leaving them with only 32.6% of the delegation. This 10.6% margin of disproportionality is greater than that in either 1982 or 1984. In 1978, with 47.6% of the statewide vote, Republican candidates won only 39.5% of the delegation seats, an 8% disproportionality. In 1980, the end of the decade when districts were at their *worst* in terms of population equality, Republican candidates had their best year under the Masters Plan, taking 48.8% of the delegation seats with 51.1% of the statewide vote. (These figures are derived from the Statements of the Vote for these years issued by the California Secretary of State, which are part of the record in the district court.)

To understand that the individual is more important than the party in California politics, one need only note that California's Governor is a Republican, while its Lieutenant Governor is a Democrat; similarly, one United States Senator is a Republican and one is a Democrat. Voter focus on the individual candidate, rather than the candidate's political party, is particularly important in congressional district elections. *See* Mayhew, *Congress: The Electoral Connection* (1974) 26 ("a congressman can—indeed must—build a power base that is substantially independent of party") and 27 ("no theoretical treatment of the United States Congress that posits parties as analytic units will go very far"). *See also* Jewell, *The Consequences of Single- and Multi-member Districting,* in Representation and Redistricting Issues, *supra*, 132-34 (a single-member district representative provides constituent services to everyone in the district and is expected to bring government contracts, industry and other economic benefits to the district).

Second, the votes-to-seats ratio urged by plaintiffs establishes a measure of proportionality in which the touchstone is not Republicans or "true believers" (*i.e.*, Republicans who can be counted on to vote for Republican candidates). *See Davis v. Bandemer, supra,* 106 S.Ct. at 2811 n.15. Instead, the base for measuring proportionality in plaintiffs' view is the percentage of voters statewide who in any given election voted for Republican congressional candidates, regardless of whether the voter was a Republican, a Democrat, a member of a third party, or an independent. Plaintiffs propose defining "Republican voting strength" to include "registered Republicans *and those who tend to vote for Republican candidates.*" Jur. St. at 8 (emphasis added); *see also id.* at 26. This expansion of the base is terribly misleading.[19]

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[19] It is not clear how far plaintiffs seek to expand this base. The individual plaintiffs, registered Republicans, stop short of claiming they *always* vote for Republican candidates for Congress. Third Am. Complaint, ¶ 1, Jur. St. App. at 32a. The larger group of "Republican voters" plaintiffs call the "core of Republican voting strength" are described as voters "who in fact vote for Republican candidates and will predictably do so in the future." Third Am. Complaint at ¶¶ 2 and 3, Jur. St. App. at 33a. "Vote" does not mean vote in every election or even frequently; and

In race cases, for example, the courts have never included "cross-over" white voters who vote for minority candidates in assessing levels of disproportionality or establishing some fair level of representation. *See, e.g., Thornburg v. Gingles, supra,* 106 S.Ct. at 2752, 2761, 2776, 2780, 2794. Rather, courts look to the size of the minority group itself. *Ibid.* In the context of political parties, registration figures would be the comparable measure.[20]

2. Republicans have had proportional representation in California's congressional delegations for at least two decades

If one looks at proportionality using registered Republicans as the base, then Republicans enjoy at least proportional representation in California's congressional delegation and have for years. In 1986, Republicans, with 37.8% of the registered voters, held 40% of the seats in California's Congressional delegation. They also had 40% of the delegation in 1984, although as of November 1984 only 36.5% of registered voters were Republicans. In 1982, they held one less seat, 37.8% of the delegation, but only 34.9% of the voters were registered Republicans. In 1980, they held 48.8% of the seats with only 34.7% of the registered voters. *See* Statements of the Vote and Reports of Registration issued by the California

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"predictably" is far from certainly. This is an amorphou group at best. If a constitutionally protected class can be defined in this loose a manner it "would hardly take extraordinary ingenuity for a lawyer to find 'insular and discrete' minorities at every turn in the road." *Sugarman v. Dougall,* 413 U.S. 634, 657 (1973) (Rehnquist, J., dissenting); *Whitcomb v. Chavis, supra,* 403 U.S. at 156-57. *See generally* Ely, *Democracy and Distrust: A Theory of Judicial Review* (1980) 151-53.

[20] Using registered Republicans as the base is most generous to plaintiffs, for they have not pled, nor could they prove, that registered Republicans always, or even routinely, vote for Republican candidates. We do not concede that only Republican legislators can represent Republican voters. As Abraham Lincoln said when he ran for reelection to the Illinois Assembly in 1836,

> If elected, I shall consider the whole people of Sangamon my constituents, as well those that oppose as those that support me.

De Grazia, *Public and Republic: Political Representation in America, supra,* 127.

Secretary of State for 1980, 1982, 1984. Figures for the 1970s are comparable. *See* Statements of the Vote for 1974, 1976 and 1978.[21]

This sort of "persistent proportional representation is inconsistent" with an allegation of discrimination in the electoral system.[22] *Thornburg v. Gingles, supra,* 106 S.Ct. at 2780. *See also id.* at 2793 (O'Connor, J., joined by Burger, C.J., Powell and Rehnquist, J.J., concurring). In short, even on their own terms, the plaintiffs have not pled and cannot plead a constitutional violation.

E. Republicans Have Enormous Political Influence in Congress and in Every Other Relevant Political Arena

Plaintiffs have not alleged and could not truthfully allege that Republicans are denied meaningful representation or substantial political influence at either the federal or the state level. Perhaps for this reason, they seek to avoid the issue. Instead, they argue that because their challenge is to congressional districts, any judicial assessment of Republican political power must be limited to the Congress and the California congressional delegation. Jur. St. at 12-14.[23]

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[21] All of these documents are part of the record in the district court.

[22] Blacks and Hispanics enjoy much less proportional representation in the California congressional delegation than do Republicans. One of the aims and achievements of A.B. 2X was to increase Hispanic representation and not retrogress in Black representation. Under A.B. 2X two additional Hispanic candidates have been elected to the House of Representatives from California and the number of Black representatives has not decreased.

[23] Indeed, appellants would limit the judicial focus even further to "the congressional electoral process" or what they call "the political process directly involving or resulting in election to the offices which are the focus of appellants' complaint." Jur. St. at 12. Appellants' constricted view of the relevant forum for evaluating their political power is ironic given their expansive view of what constitutes "Republican voting strength" for purposes of measuring proportionality. *See* section I-D-1, *supra.*

Under appellants' constrained approach the courts would ignore the existence of a popular Republican President with power to propose legislation to the House of Representatives, lobby its members, veto its bills, and negotiate the impact of his proposals and vetoes. Under appellants' approach, the courts would also have to ignore the fact that California has a popular Republican Governor, who is eligible for reelection in 1990 and would have veto power over new districting plans. This Court's jurisprudence and the racial gerrymandering cases reject such a myopic view of political power. Established law permits and requires courts assessing partisan gerrymandering claims to analyze the plaintiffs' political power and participation in the broader context—be it the city, the county, the state or the federal government. *See, e.g., Davis v. Bandemer, supra,* 106 S.Ct. at 2810-13, 2814; *Washington v. Finlay, supra,* 664 F.2d at 922-23.

Moreover, regardless of which perspective on political power one adopts—the extremely narrow one proposed by appellants or the broader one required by this Court—the conclusion is the same: Republican clout and participation are substantial.

Republican influence and power in the process of congressional redistricting in California is a matter of public record. As the district court noted, plaintiffs' own complaint shows that when Republicans did not like the districts adopted by the Legislature in A.B. 301, they successfully sponsored a referendum disapproving those districts. *See* Third Am. Complaint, ¶ 11, Jur. St. App. 17a-18a, 36a. Instead of exercising their demonstrated political power to refer A.B. 2X, however, plaintiffs eschewed the political forum and sought judicial intervention. Dissatisfied Republicans' decision not to exercise their political influence does not make that power any less real.[24]

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[24] California Republicans' ability to influence the 1980s redistricting is further evidenced by the fact that in 1982 Republicans successfully referred the state legislative districting plans as well (*see Legislature v. Deukmejian,* 34 Cal.3d 658, 667 (1983)), and then negotiated bipartisan districting plans for the state Senate and Assembly that passed by more than a two-thirds vote in each house. Cal. Stats. 1983-84, ch. 8, §§ 4, 6, 8; Cal. Const., art IV, § 8(d).

Eighteen members—40%—of the California congressional delegation and 176 members of the United States House of Representatives are Republicans. Even if Republicans are, as plaintiffs claim, unable to elect a Republican candidate in certain districts, their partisan interests can be and are represented by Republican members from other districts. *See United Jewish Organizations v. Carey,* 430 U.S. 144, 166 n.24 (1977) ("The effect of the reapportionment on whites in districts where nonwhite majorities have been increased is thus mitigated by the preservation of white majority districts in the rest of the county").

Moving beyond the House of Representatives to the "political process as a whole" (*Davis v. Bandemer,* 106 S.Ct. at 2810), Republican influence is even more evident. Until 1987, Republicans held a majority in the United States Senate. There are still 45 Republican Senators. California Republicans hold both the presidency and the governorship. Republicans hold 15 of California's 40 State Senate seats and 36 of the 80 Assembly seats. Republicans hold judicial positions at every level, along with control over judicial appointments to state and federal courts. There are also numerous Republican appointed officials at every level of government.

These are not the markings of a politically disadvantaged group. Plaintiffs have no constitutional claim for partisan gerrymandering.

II

THE DISTRICT COURT PROPERLY DISMISSED PLAINTIFFS' REMAINING CLAIMS

In addition to the partisan gerrymandering claims, plaintiffs' third amended complaint alleges additional claims based upon article I, section 2, the First Amendment and the Guarantee Clause. Plaintiffs alleged no additional or different facts in support of these alternative legal theories; nor can they cite any legal authority that the constitutional provisions which they invoke apply in this context. The district court rightly found these claims without merit.

A. Article I, Section 2 of the Constitution Does Not Apply Here

Appellants argue that *Wesberry v. Sanders*, 376 U.S. 1 (1964) supports their claim that article I, section 2 of the United States Constitution "applies to both numerical *and* political gerrymanders." Jur. St. at 23. The district court was entirely correct, however, in stating that *Wesberry* and cases since support the conclusion that " 'population alone has been the sole criteria of constitutionality in congressional redistricting under Art. I, § 2 . . . . ' " Jur. St. App. at 20a-21a (quoting *Mahan v. Howell*, 410 U.S. 315, 322 (1973)); *see also Karcher v. Daggett*, 462 U.S. 725, 734 n.6 (1983) (describing an article I, section 2 case as doing "little to prevent what is known as gerrymandering" and being limited to "achieving population equality").[25]

The language of article I, section 2 barely gave the Court in *Wesberry* an opening to hold that this provision requires *intra*-state population equality. It says only that "[t]he House of Representatives shall be composed of members chosen every second year by the people of the several states . . . " and that "[r]epresentatives . . . shall be apportioned among the several States . . . according to their respective numbers . . . . " As Justice Stevens pointed out in *Karcher v. Daggett*, the language says nothing about composition *within* a state, only about apportionment among the states. *Karcher v. Daggett, supra*, 462 U.S. at 745 (concurring opinion). The *Wesberry* Court found the population

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[25] Nor does *Daggett v. Kimmelman*, 580 F.Supp. 1259 (D. N.J. 1984), *aff'd* 467 U.S. 1222 (1984) support appellants' position. The fact that a district court implementing *Karcher's* strict reading of article I, section 2 selected at the remedy phase a plan which it said did not involve "an intentional gerrymander" does not have anything to do with what article I, section 2 requires. The district court explicitly did so not because it found any command in article I, section 2, but because avoiding partisan gerrymandering was a legitimate goal for the state or the court to consider when selecting from among competing plans. 580 F.Supp. at 1261. That district court also held that "preserving cores of prior districts" was a legitimate goal. By appellants' reasoning, this statement by the *Daggett* court would amount to a ruling that article I, section 2 includes such a requirement.

equality requirement not in the strict language of the section, but by interpretation in light of the *Debates of the Constitutional Convention* and the contemporaneous writing of our founders. *Wesberry, supra,* 376 U.S. at 8-18.[26] None of these sources supports the interpretation that appellants propose here.

Appellants extract phrases from *Wesberry* that are classic formulae of population equality and then argue that they embrace this partisan gerrymandering claim. *See* Jur. St. at 23-25. Theirs is an exercise in sophistry: because one-person-one-vote claims are cognizable under both the Fourteenth Amendment and article I, section 2, and because *Davis v. Bandemer* held partisan gerrymandering claims cognizable under the Fourteenth Amendment, then appellants imply, such claims must also arise under article I, section 2. But this Court in *Davis* made it clear that partisan gerrymandering claims are Fourteenth Amendment discrimination claims and that they are not favored. There is no reason to stretch to bring such claims within the ambit of article I, section 2. Both the language and the history of that section limit its mandate to equipopulous districts.

B. Plaintiffs' Complaint Does Not State a Plausible First Amendment Claim

Appellants have presented in this case the same First Amendment theories that their counsel offered to this Court in an amicus brief filed on behalf of the Republican National Committee in *Davis v. Bandemer.*[27] No member of this Court even mentioned this alternative legal theory in *Davis v. Bandemer.* Appellants are unable to point to a single court that has held the First Amendment applicable to redistricting. Instead, they cite cases on campaign expenditures, ballot access, and party convention rules.

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[26] Madison, in *The Federalist No. 57,* for example, assumed that Pennsylvania would divide districts on an equipopulous basis. *The Federalist Papers* (Bantam Classic ed. 1982) 293. *See also The Federalist No. 54* (Madison), *id.* at 277 ("numbers" are "the only proper scale of representation").

[27] *See* Brief Amicus Curiae of the Republican National Committee in Support of Appellees filed in *Davis v. Bandemer,* No. 84-1244, at 8-17.

These cases have nothing to do with redistricting, and as the district court held, they provide no support for plaintiffs' claim.

The cases which appellants cite share an important characteristic that is utterly absent in the redistricting context. Each case involves direct *exclusion* of the aggrieved individuals or parties from participation in an important phase of the electoral process, or direct interference in the internal workings of a political party. Plaintiffs have not pled, nor can they plead, such direct and substantial restrictions on, or interference with, protected speech or association. The district court correctly found that they have no First Amendment claim.

C. Plaintiffs Have No Claim Under the Guaranty Clause

Plaintiffs' claim under the Guaranty Clause is disposed of by *Baker v. Carr*, 369 U.S. 186 (1962):

> This case does, in one sense, involve the allocation of political power within a State, and the appellants might conceivably have added a claim under the Guaranty Clause. Of course, as we have seen, *any reliance on that clause would be futile.* But because any reliance on the Guaranty Clause could not have succeeded it does not follow that appellants may not be heard on the equal protection claim which in fact they tender. True, it must be clear that the Fourteenth Amendment claim is not so enmeshed with those political question elements which render Guaranty Clause claims nonjusticiable as actually to present a political question itself. But we have found that not to be the case here.

Baker v. Carr, supra, 369 U.S. at 226-27 (emphasis added).

Appellants rely on a statement in *Reynolds v. Sims*, 377 U.S. 533, 582 (1964), describing *Baker* as stating that "some questions raised under the Guaranty Clause are nonjusticiable, . . ." Jur. St. at 28. They omit the accompanying footnote in which this Court expressly noted the *Baker v. Carr* discussion of "the nonjusticiability of malapportionment claims asserted under the Guaranty Clause." 377 U.S. at 582 n.64.

CONCLUSION

It may be that the two major political parties in this country could never plead the facts necessary to justify judicial intervention in their redistricting disputes. If this is so, it is because, despite their complaints, they continue to enjoy such enormous political power that they are properly left to political remedies. On the other hand, it may be that at some time and in some place Republicans or Democrats could plead the pervasive and persistent degradation of their political influence that calls for judicial intervention. As the district court ruled, this is not such a case.

This Court should deny jurisdiction for lack of a substantial federal question. Alternatively, the decision of the district court should be summarily affirmed.

Respectfully submitted,

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IN THE

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Appellants,

v.

MARCH FONG EU, *et al.*,

Appellees.

Appeal from the United States District Court for the Northern District of California

APPELLANTS' BRIEF IN OPPOSITION TO MOTION OF THE ASSEMBLY OF THE STATE OF CALIFORNIA TO DISMISS OR AFFIRM

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INTRODUCTION

In its motion to dismiss or affirm ("Motion"), appellee Assembly of the State of California ("Assembly") makes three principal arguments: that appellants' complaint below alleged no discriminatory effects other than disproportional election results; that the effects alleged did not approach the level of discriminatory effects required in racial discrimination cases; and that the proper measure of proportionality

is congressional seats compared to party registration figures.[1]

These arguments are without merit.[2] The complaint speaks for itself and clearly alleges effects far beyond disproportional election results. *See, e.g.*, Juris. St. at 41a-49a. Other than in connection with the arguments that follow, the Assembly's assertions to the contrary merit no further response. Furthermore, the Assem-

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[1] The Assembly's "Statement of the Case" contains a distorted presentation of facts, and some facts not contained in the record below, which are in no way pertinent to this Court's jurisdiction. Appellants refrain from responding to these references, but emphasize that this silence should not be construed as agreement with these assertions. *See, e.g.* Motion at 3 n.1 and at 4 n.3.

[2] The only purely jurisdictional issue raised in the Assembly's Motion is a footnote suggesting that this appeal is premature. (Motion at 6 n.4). Appellants have already responded to this issue and refer the Court to the authorities supporting jurisdiction cited in their responses of May 16 and 17 to the appellees' motions for extensions, which were denied by Justice O'Connor.

The cases cited by the Assembly add nothing to their previous analysis. *Goldstein* v. *Cox*, 396 U.S. 471 (1970): interlocutory appeal refused, where a three-judge court had denied appellants' motion for summary judgment, which involved no question of preliminary or permanent injunctive relief; *Gunn* v. *Univ. Comm. to End the War in Vietnam*, 399 U.S. 383 (1970): no section 1253 jurisdiction because the three-judge court issued neither an injunction nor an order granting or denying one; *Schmidt* v. *Lessard*, 414 U.S. 473 (1974): jurisdiction present under section 1253, but cause remanded because the order granting the injunction was not specific enough to comply with Fed. R. Civ. P. 65(d). None of these situations is applicable to the instant case. Judge Poole's memorandum opinion and order has disposed of appellants' claims with prejudice, and nothing that Judge Schnacke can say in his dissenting opinion can change the effect of the court's order.

bly's reliance on party registration figures and racial gerrymandering cases is misplaced and does not affect this Court's jurisdiction of the appeal.

ARGUMENT

I. REGISTRATION FIGURES ARE NOT A RELIABLE MEASURE OF PARTISAN VOTING STRENGTH IN CALIFORNIA.

Appellants' allegations of lack of reasonable parity between votes cast and seats won are well rooted in this Court's precedents. This lack of parity is but one of a series of the indicia of unconstitutional gerrymandering which appellants alleged below. In *Davis* v. *Bandemer*, 106 S. Ct. 2797 (1986), Justice White writing for the plurality noted that "a level of parity between votes and representation . . . is hardly an illegitimate extrapolation from our general majoritarian ethic and the objective of fair and adequate representation recognized in *Reynolds* v. *Sims*, 377 U.S. 533 (1964)." *Davis* v. *Bandemer* at 2807, n.9. In *Gaffney* v. *Cummings*, 412 U.S. 735 (1973), this Court approved a statewide districting plan which measured "statewide political strength," not against registration data, but against actual votes cast. 412 U.S. at 738. *See also Karcher* v. *Daggett*, 462 U.S. 725, 754-5 & n.13 (1983) (Stevens, J., concurring).[3]

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[3] Appellants allege lack of parity, between Republican voting strength, and seats, as verified by election results. *See., e.g.*, Complaint, para. 2, 20-23, 26, 27 & 29; Juris. St. at 33a, 41a-51a. The political science community is in considerable agreement that not only are registration figures an incomplete measure of a party's strength within the electorate, it is also possible to measure effectively—and use in redistricting—the base voting strength of a political party, even in the absence of registration information. (Juris. St. at 21 n. 11).

With no support from the district court's opinion, the Assembly asserts that, as a matter of law, party registration figures are the proper measure of base partisan voting strength. (Motion at 22.) The Assembly's position is without support in either the law or reality. The Assembly does not cite any case which holds that registration figures are the measure of partisan voting strength.

More importantly, registration figures are misleading, because, in California at least, such data are unreliable. There is evidence in the record below in which appellee Secretary of State, the named defendant, questions the validity of California's registration data because of the significant "deadwood" on the unpurged registration rolls.[4] Since the hearing on the motion to dismiss below, the Secretary amplified this view in a February 1987 speech. A release from the Secretary's office and widely reported in the California press states:

> Not since 1934 has the Democratic percentage of total registration been as low as it is right now . . . a pitiful 50.84 percent. And, of course, even that number overstates reality because of the deadwood on the rolls . . . deadwood which is there because we Democrats are too embarrassed to remove it by instituting an effective purge

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[4] Because the Assembly had requested the district court to take judicial notice of registration data to create inferences to dispute the allegations of the complaint (Motion p. 23, n.21.), appellants opposed judicial notice and offered evidence of the "deadwood" on the unpurged registration rolls, by which the reliability of California's registration figures is called into question by the Secretary of the State of California herself.

> mechanism. Removing the deadwood would expose us for what we are . . . a minority party.
>
> Make no mistake about it. California is becoming, California has become, a Republican state, and not just at the Presidential level . . . Were it not for reapportionment, Republicans would probably dominate not only the statehouse, but the legislature and the congressional delegation as well.

"Excerpts of Remarks of Secretary of State March Fong Eu before the Democratic State Central Committee, Sacramento, February 1, 1987," Release No. Feb87/S/Dem 2187; *See* "Eu Hurls Sharp Warning at Her Party," United Press International Regional News, Feb. 1, 1987; "'Deadwood' Is Clogging the Figures of San Diego's Actual Eligible Voters," Los Angeles Times, Feb. 28, 1987, p. 1, col. 3; "Democrats Cling to Deadwood in Face of Rising Republican Tide," San Fernando Daily News, Nov. 25, 1987, p.10, col. 1; "Compromise Proposal Would Rid Voter Rolls of 'Deadwood'," Los Angeles Times, Feb. 25, 1988, p. 29, col. 3.

Hence the use of registration data as a measure of partisan voting strength produces a distorted and untenable result.

II. APPELLANTS ALLEGE NUMEROUS SIGNIFICANT INDICIA OF DISCRIMINATORY EFFECTS AND ARE NOT REQUIRED TO PLEAD INDICIA OF DISCRIMINATION IDENTICAL TO THOSE RELEVANT TO RACIAL GERRYMANDERING CASES.

The Assembly admits that this Court in *Davis* v. *Bandemer* used racial gerrymandering cases for *analogous* indicia of partisan discrimination. (Motion p. 16.) *Davis* v. *Bandemer* at 2812-2813. Neither this Court nor common sense would require that the evi-

dence in partisan gerrymandering cases be *identical* to that in racial cases. The Assembly appears to maintain, nonetheless, that indicia found sufficient in the racial gerrymandering cases it cites selectively are the *only* indicia that can meet appellants' pleading burden.

Even though such a showing is not mandated by *Bandemer*, appellants have alleged evidences of discrimination quite analogous to those found in many racial gerrymandering cases, as well as additional indicia sufficient to invoke constitutional protections. Taken together, the alleged indicia would clearly satisfy the "totality of the circumstances" test applied by this Court in the racial context in *Thornburg* v. *Gingles*, 478 U.S. 30 (1986). *E.g.*, *Thornburg* v. *Gingles* at 2761: predictability the evidence of *structural* dilution as compared to the loss of an occasional election; *Ketchum* v. *Byrne*, 740 F.2d 1398, 1405 (7th Cir. 1984) *cert. denied sub nom. City Council of Chicago* v. *Ketchum*, 471 U.S. 1185 (1985): district configurations an independent indicium of discriminatory effect; *Major* v. *Treen*, 574 F. Supp. 325, 352 (E.D. La. 1983): "stacking" and "cracking" of voting strength evidence of vote dilution. The test applied in *Gingles* was an effects test, as required by the 1982 amendments to the Voting Rights Act of 1965, 42 U.S.C. sec. 1973(b). If appellants were a racial or religious group and alleged the same combination of intent and persistent and predictable discriminatory effects alleged in the complaint, there would be no doubt that a constitutional claim would survive a motion to dismiss. And so it should here.

CONCLUSION

If this Court's reasoning in *Davis* v. *Bandemer* is to have any practical meaning in the redistricting of the 1990s, Judge Poole's opinion below cannot be allowed to stand.[5] Neither should the Assembly be allowed to augment that opinion with unreliable data. The Assembly's motion to dismiss or affirm should be denied, and probable jurisdiction noted.

Respectfully submitted,

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[5] Summary affirmance or dismissal would be an endorsement by this Court of both Judge Poole's reasoning and judgment below. *Hicks* v. *Miranda*, 422 U.S. 332, 344-345 (1975). Thus, Judge Poole's opinion nullifying Justice White's opinion in *Davis* v. *Bandemer* would bind all lower courts "until such time as the Court informs [them] that [they] are not." *Id.*

No. 87-1818

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In the Supreme Court of the United States

OCTOBER TERM, 1987

ROBERT E. BADHAM, et al.,

Appellants,

vs.

MARCH FONG EU, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

MOTION OF THE MEMBERS OF THE CALIFORNIA DEMOCRATIC CONGRESSIONAL DELEGATION TO DISMISS OR AFFIRM

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I.
INTRODUCTION

Before this Court reversed the trial court judgment in *Davis v. Bandemer*, 478 U.S. 109 (1986), the Appellant California Republicans (the "California Republicans") told this Court that Indiana's redistricting was "remarkably similar to this case" and that the parallels between the two cases were "striking."[1] Whatever claims the California Republicans may now make about the meaning of *Bandemer*, they cannot deny that a 7—2 majority of this Court found that the facts established in that case lacked constitutional significance. Thus, at a bare minimum, the California Republicans would have

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[1] Republican's Petition for Writ of Certiorari at 6 n.5, 23, *Badham v. Secretary of State of California*, 470 U.S. 1084 (1985) (No. 84-1226) (hereinafter "Reps. Cert. Pet. in No. 84-1226").

had to have alleged materially more than what the Indiana Democrats proved.

But as the chart in Section III of this brief demonstrates, they have not done so. Instead, true to their claim of "striking" similarities, the California Republicans have alleged, at best, a mirror image of *Bandemer*, down to the smallest details. This case, then, involves a routine and inevitable application of *Davis v. Bandemer*. On this ground alone, once a judgment is entered below, it should be summarily affirmed or, in the alternative, the appeal should be dismissed for want of a substantial federal question.

But there are other grounds. There is no constitutional theory that would impose lesser pleading burdens on partisan groups than on racial groups. This Court's precedents — *Rogers v. Lodge*, *White v. Register*, *Whitcomb v. Chavis* and *Mobile v. Bolden* — set a high standard that minority plaintiffs must meet in order to prove a constitutional violation. In each of those cases, the affected racial minority comprised a substantial percentage of the population, but had elected no, or virtually no, representatives ever. That was not enough, however, to make out a constitutional violation. This Court required, in addition, "strong indicia" of lack of political power and an examination of the political process "as a whole." The *Bandemer* plurality reaffirmed the Court's long-standing "conviction" that "the power to influence the political process is not limited to winning elections." 106 S. Ct. 2797, 2810. Because of the "peculiar characteristics" of partisan gerrymandering cases, it erected a threshold pleading requirement unique to partisan cases and acknowledged that the standards for a partisan gerrymandering case "may be more difficult" to prove even than those in the racial gerrymandering cases. *Id.* at 2810 n.12.

The California Republicans would turn this approach on its head. What they alleged does not begin to approach

what was proven in *Rogers v. Lodge* and *White v. Register* — or even in *Mobile v. Bolden* and *Whitcomb v. Chavis*, where the plaintiffs lost. As the district court observed, the Republicans alleged *no* indicia, strong or otherwise, concerning lack of political power and presented no allegations of effects that went beyond the results of congressional elections. Even there, the Complaint admitted that Republicans control fully 40% of California's delegation to Congress, which was almost exactly the Republican's proportional share of registered voters in the state at the time of the two elections under A.B. 2X. The only "degradation" that the Complaint alleged was that the Republicans control three, four or five[2] fewer seats in the House of Representatives than they would have had with a different *kind* of proportional representation — proportionality between the number of votes cast for Republican candidates in forty-five different California congressional races and the percentage of seats won by Republican candidates. This kind of *de minimis* departure from seats/votes proportionality, which occured even under the redistricting plan endorsed by the Complaint,[3] can constitute an unconstitutional effect only if political parties merit greater protection than racial minorities and only if the Constitution requires proportional representation of a particular variety.

And there is more. While the California Republicans' Complaint does mirror the defective proof in *Bandemer*, it also reveals a markedly weaker justification for judicial intervention than did the Indiana case. Unlike Indiana, California does not give its Legislature and Governor ultimate political power. That power is instead held at large by the electorate, which can block bills from becoming law through the referendum, and can enact

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[2] *See, infra*, at n.18.

[3] *See, infra*, at n.18.

laws directly through the initiative. Only the electorate can change the constitution. No serious analysis of the process that leads to the enactment of California laws, like the redistricting law at issue, can ignore these political facts of life.

The political process that led to the challenged elections was one in which the Republicans initially participated with what they term "overwhelming" success. Indeed, it was Appellant Assemblyman Robert Naylor who laid down the rules of the process in an "anti-gerrymandering" constitutional amendment he authored, promoted and presented to the electorate in 1980. And it was the Republican National Committee, aided by Presidents Reagan and Ford, that used the referendum to defeat the Legislature's first redistricting plan, A.B. 301. Despite these important victories, the Republicans later absented themselves from the process, both by foregoing a referendum against A.B. 2X and by abandoning the power they had won in amending the constitution. They elected instead to pursue political power through a decree from the federal judiciary, and insisted that the courts could not consider the political power they had won and then abandoned. There is no parallel to this history in *Bandemer*, or indeed in the entire annals of federal redistricting litigation. Never before has a group with so much proven power relinquished so much of it, only later to claim that the Constitution and the federal courts must restore it to its rightful political position.

This case presents a result compelled by earlier cases and a singularly inappropriate occasion for making new law. The allegations below provide no basis for further prolonging these tortuous proceedings. In *Bandemer*, seven members of this Court expressed serious concerns about burdening the federal courts with regulation of "the most political of legislative functions." Absent the pleading threshold wisely imposed in *Bandemer*, the

federal court below would have become the first in history to pass judgment on whether members of a coordinate branch of government were properly representing their constituents.[4] Justice O'Connor's opinion warned of a "gradual evolution" into a requirement of essentially proportional representation. The plurality and dissent were confident that the courts could successfully resist any such evolution. This case presents the issue in stark relief.

A victory for California Republicans, where Indiana Democrats and racial minorities have failed, would signal that the federal courts are about to enter "a vast wonderland of judicial review of political activity." *Rogers v. Lodge*, 458 U.S. 613, 649-50 (1982) (Stevens, J., dissenting). It would tell the two most powerful political parties in the free world that where they fail to exercise their own considerable power, they may later rely upon the federal courts to redistribute partisan political power. It would confirm that a threatened "gradual evolution" into proportional representation has suddenly come to fruition and that an exact and particular form of proportional representation is to be the standard. In short, it would confirm Professor Schuck's recent conclusion about *Bandemer* that "*this* time, the Cassandras are correct." Schuck, *The Thickest Thicket: Partisan Gerrymandering and Judicial Regulation of Politics*, 87 Colum. L. Rev. 1325, 1384 (1987).

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[4] This prospect is not imaginary. The *Bandemer* plurality requires "actual proof" that a representative is failing to represent plaintiffs' interests. *Bandemer*, 106 S.Ct. at 2810. When the district court stayed proceedings pending *Bandemer*, the Republicans had obtained subpoenas commanding six sitting Democratic members of the United States Congress to submit to depositions at the headquarters of the Republican National Committee.

II.
STATEMENT OF THE CASE

Politics in California is played out in two distinct arenas. First, there is the Legislature, composed of representatives from 120 single-member districts. Like most legislatures, it makes laws, subject to the governor's veto. Second is California's "ultimate" political power, which resides at large in the hands of the electorate. This direct electoral power is the legacy of Hiram Johnson's Progressive Movement, which was deeply suspicious of politicians and the putative legitimacy of their majorities. Article II of the California Constitution gives Californians direct power to veto bills of which they do not approve, by referendum, or to enact laws and constitutional amendments directly, by initiative. No change can be made to the California Constitution without a popular vote. Cal. Const. Art. XVIII.

On the eve of the 1980's redistricting in California, Appellant Republican Assemblyman Robert Naylor authored a proposal to add certain substantive criteria on redistricting to the California Constitution. In the official ballot argument, the proposal was described by Assemblyman Naylor as a bar against gerrymandering: "From past experience, we know what could happen with next year's reapportionment .... [This amendment] will block forces in the Legislature from gaining unfair dominance by one political party or insuring reelection for particular incumbents." Assemblyman Naylor's amendment was approved by the voters in the June 1980 primary election, and became Article XXI of the California Constitution. Redistricting after the 1980 census was accordingly governed by Article XXI.

In September 1982, the California Legislature passed a bill, entitled A.B. 301, that established 45 equipopulous congressional districts. Complaint, ¶9. The California Republican Party and the Republican National Commit-

tee promptly claimed that A.B. 301 was a partisan gerrymander. Having been defeated in the legislative arena, they turned to the referendum process and launched a referendum petition against A.B. 301. Complaint, ¶11. The petition campaign featured an eloquent written plea from President Reagan that was, according to the Republicans, mailed to 3.5 million voters. The campaign succeeded in collecting enough signatures to put A.B. 301 to a referendum vote in the June 1982 primary. Under the provisions of the California Constitution, the successful qualification of the referendum vote barred A.B. 301 from taking effect as a law. *Assembly v. Deukmejian*, 30 Cal. 3d 638, 656-57, *appeal dismissed and cert. denied sub nom. Republican National Committee v. Burton*, 456 U.S. 941 (1982).

With A.B. 301 suspended by the Republicans, and with no other set of equipopulous districts available, the California Supreme Court was faced with the task of selecting a set of districts for use in the imminent 1982 elections. A unanimous[5] California Supreme Court ordered that the A.B. 301 districts be used for the 1982 elections. *Id.*

The referendum was put to a vote in the June 1982 primary, supported by a ballot argument by former President Ford. In what the Republicans have described as an "overwhelming" victory, A.B. 301 was barred from any future legal use. Complaint, ¶11. In addition, pursuant to Article II, Section 9 of the California Constitution, the Legislature was barred from ever enacting a future reapportionment plan that was not "essentially different" from A.B. 301. *Id.* at 678.

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[5] The Jurisdictional Statement claims that the court was "divided" on this point. It was not. The court voted 7-0 to use the A.B. 301 congressional districts on a temporary basis, but 4-3 to use the state legislative districts that were also the object of referenda.

In the November 1982 general election, Republicans won seats proportional to their share of the two-party registration, as reflected in the 1982 California Statement of Registration. The Republicans regained control of the Governor's office by electing George Deukmejian, but lost every other statewide constitutional office. Complaint, ¶12; Official Statement of Vote 1982.

With the 1982 elections concluded, an intense partisan battle shaped up over the districts to be used in 1984. Buoyed by their successful referendum efforts, the Republicans threatened to overturn any new redistricting plan that failed to satisfy their demands. When A.B. 2X was enacted in December 1982, the Republicans promptly declared their opposition and proclaimed, "There will be a referendum." Juris. Stat. at 66a, 60a. Yet, instead of blocking the bill with a referendum petition, the Republicans sat by as the bill became law.

On March 4, 1983, the Republicans filed a complaint in the district court, alleging that A.B. 2X violated several provisions of the California Constitution. Building on their referendum victory, they claimed that A.B. 2X essentially reenacted A.B. 301 in violation of Article II, Section 9 of the California Constitution. Using the provisions of Article XXI that Assemblyman Naylor had authored, they alleged that A.B. 2X illegally created discontiguous districts and split too many cities and counties. They also alleged procedural improprieties and that the Secretary of State's post-enactment corrections were a nullity under state law. This flurry of state constitutional claims was joined to a federal claim of population inequality and a claim of partisan gerrymandering. *Badham v. Eu*, 568 F.Supp. 156, 159 (N.D. Cal. 1983), *aff'd*, 721 F.2d 1170 (9th Cir. 1984).

Because of the primacy of the state constitutional claims, a unanimous district court entered an order on June 20, 1983, abstaining from deciding any federal constitutional claims until the Republicans' state claims

were adjudicated. In a memorandum opinion, the court observed: "If A.B. 2X is found invalid because it violates the California Constitution . . . , the federal constitutional questions will become moot." *Id.*

The Republicans sought a writ of mandamus against the abstention order, principally on the basis that litigation in the state courts entailed "intolerable delays." In the meantime, they attempted to delay the state court proceedings. After acceding to the Republicans' demand for expedited treatment of their challenge, a unanimous Ninth Circuit panel rejected the Republicans' challenge to the abstention order. In an opinion by Judge Wallace, the court unanimously affirmed the abstention order "[e]ssentially for the reasons stated by the district court." 721 F.2d 1170, 1172. It did not resolve questions about the Republicans' delaying maneuvers in state court, but stated that "the district court must examine any allegations that the Republicans have not acted in good faith, especially during the period following its abstention order." *Id.* at 1174.

On December 12, 1983, the Republicans filed a motion for preliminary injunction against the use of A.B. 2X in the 1984 elections. The motion was filed just three days before the deadline the Republicans themselves had alleged for any new districting. In their papers, the Republicans admitted that it was already too late to use a new plan in the 1984 elections. Reps. Cert. Pet. in No. 84-1226 at 14a. The district court declined to lift its abstention order. The court found that the Republicans "ha[d] not made a good faith effort to obtain the a disposition of the state law issues in state court." *Id.* Rather, they had "actively delayed" the state court action. *Id.* at 12a.

Again, the Republicans filed a writ of mandamus in the Ninth Circuit. Again, their arguments were given expedited consideration. On November 1, 1984, the Ninth Circuit affirmed the district court's continued abstention.

Badham v. Eu, 749 F.2d 36 (9th Cir. 1984) (mem.), *cert. denied*, 470 U.S. 1084 (1985)(mem.). It stated, "We are not satisfied that the Republicans have effectively pursued their claim in state court. . . ." Reps. Cert. Pet. in 84-1226 at 2a. On January 30, 1985, the Republicans petitioned this Court for review of the Ninth Circuit opinion. Certiorari was denied. 470 U.S. 1084 (1985) (mem.).

In the 1984 elections, the first held under A.B. 2X,[6] the Republicans gained one seat, as Democratic incumbent Patterson lost to Republican conservative Robert Dornan. No Republican incumbents were defeated. Again, the parties' respective share of seats mirrored the most current registration data.

On January 15, 1985, the Republicans finally filed an "at-issue memorandum" in the state court proceedings concerning A.B. 2X.[7] On January 18, 1985, they moved for an early trial date. The motion was granted, and trial was set for May 8, 1985.

On the eve of trial, having argued for almost two years that the state courts were too slow, the Republicans reversed course and abandoned their state law claims forever. The Republicans surrendered any claim that A.B. 2X conflicted with their referendum victory, or that it conflicted with the "anti-gerrymandering" provisions of Article XXI. As the Republicans' counsel put it: "The compliance or non-compliance with state law will not be raised as an issue by the plaintiffs in this or in any other litigation." Transcript of June 20, 1985 hearing, 5-6.

By that time, this Court had *Bandemer* squarely before it. Given the uncertain state of the law governing

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[6] Contrary to the Republicans' suggestions, there have been two, not three elections under A.B. 2X. *See* Section V.A., *infra*.

[7] An at-issue memorandum is the key pleading that triggers trial setting in California. Cal. Rules of Court 209, 210, 217.

justiciability, the district court stayed all proceedings in the case pending the issuance of this Court's opinion in *Bandemer*. After *Bandemer* issued, the district court held a status conference on September 19, 1986, at which it instructed the Republicans to file their "best effort" at pleading a case under *Bandemer*.

In the November, 1986 California congressional elections, the parties retained their respective shares of seats, again mirroring current official registration, despite significant Democratic gains nationally. In statewide elections, the Republicans retained the governorship, while Democrats won each of the five other statewide constitutional offices. Juris. Stat. at 200a.

The district court held a lengthy hearing on the Delegation's motion to dismiss on December 5, 1986. On January 13, 1987, the Republicans filed a final amendment to their Complaint, adding all the Republican congressional incumbents, and others, as plaintiffs. The Republicans declined the district court's repeated invitations to add to the substance of the Complaint. Juris. Stat. at 16a n.5.[8]

On April 21, 1988, the district court filed its opinion dismissing the Complaint. The district court rejected the Delegation's argument that partisan gerrymandering claims involving the United States Congress raised separation of powers concerns that rendered such claims non-justiciable. Juris. Stat. at 7a-8a. The opinion then painstakingly followed the analytic outline set forth in the *Bandemer* plurality, which stressed the importance of the special pleading threshold for partisan gerrymandering

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[8] The Republicans now claim that they could have added to the Complaint, but chose not to because they expected the district court to rule against them regardless. Juris. Stat. at 20 n.10 and 16. The Delegation knows of no rule that frees a litigant from the obligation to plead its best case if it feels the district court has already unfairly made up its mind.

claims. *Bandemer*, 106 S.Ct. at 2816. It accepted the Republicans' allegations of partisan intent for the purposes of its review (Juris. Stat. at 11a) and concentrated on the key "effects" allegations. Juris. Stat. at 8a-14a. It noted the Republicans' central allegations of disproportional results. Juris. Stat. at 12a. It looked, then, for the other "indicia" the plurality required — indicia of lack of political power. It also looked for any allegations that the electoral system "as a whole" degraded the Republicans' influence. *Bandemer*, 106 S.Ct. at 2810; Juris. Stat. at 10a, 12a. It did not find any such allegations, other than in conclusory terms. Nor did it find any allegations that Republican interests were being ignored by the congressional delegation, which was concededly composed 40% of Republicans. On the basis of this review, which was limited to the four corners of the Complaint, the court found the allegations to fail the *Bandemer* effects threshold.[9]

A dissenting opinion from Judge Schnacke was to be filed "in due course." No judgment has yet been entered in the case.

III.
THE RESULT IN BANDEMER COMPELLED THE RESULT BELOW

For years, the California Republicans have compared their claims to those of the Indiana Democrats and found

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[9] The Delegation disagrees with the Republicans' strained reading of the opinion. *See* Section IV, *infra*. The Delegation also disagrees with the Assembly that the opinion in any way adopted the broad reading of *Bandemer* set forth in the first page of the Assembly's brief. The opinion is instead a modest, systematic application of the pleading inquiry that the *Bandemer* plurality required it to make. The district court rightly abstained from any attempt to prognosticate under what circumstances different political groups may succeed under *Bandemer*.

the similarities "striking." The Republicans were right. This Court's rejection of the Indiana Democrats' claim compelled the district court's dismissal of the California Republicans' Complaint.

A. The California Republicans' Complaint Is, At Best, A Mirror Image Of The Facts That This Court Found Constitutionally Irrelevant In Davis v. Bandemer

As did the Democrats in *Bandemer*, the Republicans allege (1) malevolent intent or "partisan lust"[10] (2) a decidedly partisan enactment process, (3) a gross lack of respect for traditional "good government" criteria, (4) "bizarre" and misshapen districts, and, by way of effect, (5) a deviation from exact proportionality between the percentage of seats they won and percentage of votes cast state-wide for candidates of their party. The following chart lines up the allegations from California and the constitutionally inadequate proof from Indiana:

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[10] The speaker of Indiana's house boldly stated the partisan motivation of the Indiana plan. There has been no such admission in this case, and not a single disputed fact has been adjudicated. While this brief accepts as true those allegations of the Complaint that must be so treated in reviewing a dismissal order, there should be no misunderstanding that the Delegation vigorously disputes almost all of the operative allegations. The Delegations' concern on this point is heightened by the fact that one member of this Court seems, in passing, already to have accepted much of the Republicans' claim. *See Rogers v. Lodge*, 458 U.S. 613, 649 (1982) (Stevens, J., dissenting).

	CALIFORNIA REPUBLICANS' CLAIMS (Cites To Complaint)		INDIANA DEMOCRATS' FACTS (Cites To *Bandemer*)
1.	Republicans invalidate plan with referendum. ¶11.	1.	[No parallel facts.]
2.	Governorship originally controlled by Democrats, ¶19. now by Republicans. ¶12.	2.	Governorship controlled by Republicans. p. 2800.
3.	Democrats control both houses of state legislature. ¶14.	3.	Republicans control both houses of state legislature. p. 2800.
4.	Republicans excluded from legislative aspect of redistricting process. ¶¶ 12, 16.	4.	Democrats excluded from redistricting process. p. 2802 n.5; p. 2833.
5.	Vehicle bill used; reapportionment plan tacked on. ¶¶ 12, 13	5.	Vehicle bill used; reapportionment plan tacked on. p. 2801, 2833.
6.	No public hearings held. ¶16.	6.	No public hearings held. p. 2833.
7.	Bill (A.B. 2X) adopted on last day of session. ¶13.	7.	Bill adopted on last day of session. p. 2833.
8.	Bill adopted on strict party lines in both houses. ¶14.	8.	Bill adopted on strict party lines in both houses. p. 2833.
9.	Bill adopted hastily. ¶17.	9.	Bill adopted hastily. p. 2833.
10.	Corrections made as a result of haste; made by legislative staff. ¶¶17-18.	10.	Corrections made as a result of haste; made by legislature. p. 2833. n.5.
11.	Legislature's "paramount" concern was partisan. ¶26.	11.	Republicans motivated "solely" by partisan objectives. p. 2802 n.5, p. 2834.
12.	Districts depart from "objective" criteria. ¶22.	12.	Districts "conspicuously ignore" traditional criteria. p. 2802, p. 2833.
13.	Districts have "bizarre" shapes. ¶22.	13.	Districts have "strange" shapes. p. 2833.
14.	Districts ignore communities of interest. ¶22.	14.	Map makers gave "no consideration to communities of interest." p. 2834.

15. Districts divide cities and counties for partisan ends; examples. ¶23.	15. Map makers "carved up" counties, cities and even townships for partisan reasons; examples. p. 2833.
16. "Bizarre" shapes will adversely affect voter participation and make it more difficult to challenge incumbents. Irregular shapes of districts cause voter confusion. ¶24.	16. Strange shapes have "potential for voter disillusion and non-participation." p. 2833. Voter confusion generated by irrational district boundaries is "exacerbated." p. 2834.
17. Districts are made "uncompetitive;" almost all are safely Democratic or Republican; too many are Democratic. ¶¶26, 28. [Republicans admit that 6 of 45 seats in A. B. 2X are not "safe seats".]	7. Republicans admitted plan was designed to make 56 safe Republican districts and 30 safe "Democratic" seats. Only 14 out of 100 competitive. p. 2834.
18. Districts are "one of the most, if not the most egregious and effective gerrymanders of the 1980's." ¶20.	18. [California Republicans' *amicus* brief on side of Indiana Democrats terms Indiana gerrymander "egregious"].
19. Districts produced disproportional results on seats/votes analysis; Republicans got 40% of seats, but 50% of votes summed over 45 races. (10% gap). ¶¶20, 26. In 1986 election, gap narrowed to 7%.	19. Districts produced disproportional results. Democrats got 43% of seats but 52% of house vote summed over 100 races. (9% gap). Disproportionality much larger in at-large districts. (32% gap) p. 2801.
20. Democrats "artfully" used all "acknowledged" gerrymander techniques and did not treat incumbents equally, but no at-large districts used. ¶¶20, 21. [These allegations inaccurately refer to A.B. 2X; A.B. 2X only unseated one incumbent, a Democrat. *See* Section V.A., *infra*.]	20. Republicans "stacked" and "packed" Democrats and used at-large districts, resulting in Democrats receiving only 14% of the seats for 46% of the vote in Marion County. (32% gap). No discussion of incumbents' rights. p. 2801.

21. In first election under A.B. 2X, *Republicans* gained one seat; *Democrats* lost one, but "circumstances there were unique." ¶26.	21. [no parallel facts]
22. Disproportionality "can be predicted to persist" in next two elections; California's delegation to the United States Congress is "virtually" immutable and will change "little" until next redistricting. ¶27.	22. Republicans intended to deprive Democrats of fair opportunity to win control of legislature "at least" until 1991 [Justice Powell's view of what record "unequivocally demonstrates."] p. 2834.
23. [No parallel allegations; California congressional delegation includes four Blacks, three Hispanics, and two Asians.]	23. Districts disadvantaged black voters in particularly "hard and harsh" manner. *Bandemer v. Davis*, 603 F.Supp. 1479, 1488 (S.D. Ind. 1984).

B. The California Republicans' Allegations Present An Even Poorer Justification For Judicial Intervention.

The Delegation respectfully suggests that these similarities are indeed striking and that, on that ground alone, this case does not merit this Court's plenary consideration. In fact, however, the California Republicans' case is a markedly poorer candidate for judicial intervention. The relative weakness of the California Republicans' claim has five predominant features.

First, the California Republicans had access to, and effectively utilized, aspects of the political process that did not even exist in Indiana — the referendum and the successful submission of proposed constitutional amendments to the electorate. These both played a key role in the process that led to the establishment of the challenged districts and to the election results at issue.[11] Appellant

[11] Even the Republicans concede that an assessment of their

Robert Naylor authored and sponsored a constitutional amendment in 1980 that enacted substantive redistricting standards which became Article XXI of the California Constitution. He stated that Article XXI would "block forces in the Legislature from gaining unfair dominance by one political party or ensuring reelection for particular incumbents." The Republicans also skillfully used the referendum process to prevent the 1982 redistricting bill, A.B. 301, from becoming law. Their later and unexplained compromise of their power to affect the congressional election process was threefold: (1) they failed even to attempt a referendum against A.B. 2X, despite their "overwhelming" success against A.B. 301; (2) they abandoned their attempts to enforce Article XXI; and (3) they abandoned their claim under the California Constitution that A.B. 2X impermissibly re-enacted A.B. 301. Whatever may be said of the Indiana Democrats' plight, there was certainly no showing that they had relinquished the very power of which they later complained to have been deprived.

Second, where the California Republicans were attempting to challenge a single delegation of representatives to Congress, the Indiana Democrats challenge was to the composition of an entire state legislature. The district court in *Bandemer* found control of the Indiana legislature to be "crucial," especially in view of the fact that the governor was a member of the same party that controlled the legislature. *Bandemer v. Davis*, 603 F.Supp. 1479, 1483 (S.D. Ind. 1984). In this case, the Republicans complained about three, four or five seats in one of fifty

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political position must include "the political process directly involving or resulting in election to . . . Congress and congressional districts." Juris. Stat. at 12. In California, that process rather clearly includes both the partisan battles fought in the Legislature, as well as those that are played out in the direct political processes controlled by the electorate.

delegations to a national legislature of 435 members. The California delegation to Congress is incapable of making laws and "control" of it has at best an attenuated effect on control of the entire House of Representatives. Even the House itself passes bills subject to Senate approval and under the ultimate veto control of a Republican President.

Third, the California Republicans alleged that they would retain "only" 40% of the congressional seats in 1988 and 1990, but could not begin to prognosticate further. State legislatures, unlike Congress, draw the very districts in which their members will run and can theoretically "lock in" results decade after decade. Congress does not enjoy a parallel power; its members' seats are drawn by state legislatures elected from an entirely different set of districts.

Fourth, Indiana Democrats were victims of at-large districts that effectively cancelled out their voting strength in Marion County. This Court has repeatedly recognized the special threat posed by at-large districts and the "more politically fair" results that inhere in single-member districts. Recognizing the problem, Congress banned at-large congressional elections in 1967. 2 U.S.C. §2c. *See* Section IV, *infra*.

Fifth, as the Assembly's brief makes clear, the California Republicans have in fact achieved "sustained success" and representation proportional to their share of the two-party official registration at the time of each of the elections in question; no such proof existed in *Bandemer*. While proportional representation is clearly not a constitutional mandate, "persistent proportional representation is inconsistent with [a vote dilution claim]." *Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752, 2780 (1986).

Now that the *Bandemer* trial court has been reversed, the California Republicans assert that "[t]he record in

Bandemer appears positively ectomorphic when contrasted with the serious discriminatory efforts of A.B. 2X." Juris. Stat. at 17. The Delegation defers to the Court's assessment of the respective physiques of *Bandemer's* facts and *Badham*'s allegations.

IV.
THE CONSTITUTIONAL INADEQUACY OF THE INDIANA DEMOCRATS' AND CALIFORNIA REPUBLICANS' CLAIMS FOLLOWS FROM THIS COURT'S RACIAL GERRYMANDERING CASES

Much of the California Republicans' argument is devoted to hyperbolic or facetious characterizations of the district court's opinion. They state that the district court "concluded that Appellants' right to fair and effective representation in Congress is irrelevant," Juris. Stat. at 12, and that the district court's rationale means that "the equal protection clause no longer protects black voters" because of "the political success of Mayor Thomas Bradley in Los Angeles." Juris. Stat. at 13.[12] In an apparently more serious vein, the California Republicans complain that the district court placed undue emphasis on the following statement from *Bandemer*:

> [U]nconstitutional discrimination occurs only where the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence in the political process as a whole.

Juris. Stat. at 11, quoting *Bandemer*, 106 S.Ct. at 2810.

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[12] These tendentious characterizations of the district court's opinion are particularly hard to square with the opinion's clear statement that the undisputed facts of which it took judicial notice were "merely . . . additional support for the court's ruling" concerning the utility of further amendments. Juris. Stat. at 18a n.6.

But emphasis on this point is hardly undue, and the California Republicans' discomfort with it is instructive. The statement simply reflects the essence of this Court's racial gerrymandering cases, which focus not just on the outcome of elections and a failure of proportional representation (or in most cases, the total absence of minority representatives), but rather on the ability of the complaining minority group to have an impact on the political process generally. Any fair-minded view of *Rogers v. Lodge*, *Mobile v. Bolden*, *White v. Regester*, and *Whitcomb v. Chavis* bears this out.[13] That the standard is not an easy one for a plaintiff to meet is evidenced by the scarcity of cases in which plaintiffs have prevailed under the equal protection clause. Indeed, by 1980, "[i]n only one case ha[d] the Court sustained a claim that multi-member legislative districts unconstitutionally diluted the voting strength of a discrete group." *Mobile v. Bolden*, 446 U.S. 55, 68 (1980). In the years since then, the Court has only sustained one other such claim. In *Bandemer*, the Court noted that it has never struck down a single-member district plan. *Bandemer*, 106 S.Ct. at 2803.

The pernicious effects of at-large elections were well described in *Rogers v. Lodge*, 458 U.S. 613 (1982),

> At-large voting schemes and multi-member districts tend to minimize the voting strength of minority groups by permitting the political majority to elect *all* representatives of the district. A distinct minority

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[13] It is surely telling that the California Republicans characterize these cases as "extreme." Juris. Stat. at 14. We agree that the political degradation established in those cases was extreme; it certainly makes the California Republicans' or Indiana Democrats' supposed predicament look like the political promised land. But the Republicans apparently failed to recognize that, despite the extremity of the plaintiffs' situation, the plaintiffs did not prevail in *Whitcomb v. Chavis* or *Mobile v. Bolden*. Where these plaintiffs failed, what rule of law should help Indiana Democrats or California Republicans prevail?

> . . . may be unable to elect any representatives in an at-large election, yet may be able to select several representatives if the political unit is divided into single-member districts.

Id. at 616 (emphasis in original). The "essence" of single-member districts is to produce "a more 'politically fair'-result than would be reached with elections at large, in which the winning party would take 100% of the legislative seats." *Gaffney v. Cummings*, 412 U.S. 735, 753 (1973). The unique effectiveness of at-large districts can be seen in *Bandemer*, where Indiana Republicans used a combination of at-large and single-member districts in Marion County to give Democrats just 3 of 21 seats for 46% of the vote. *Bandemer*, 106 S.Ct. at 2801. No electoral effects alleged in this case even begin to approach this level.

The racial gerrymandering cases provide striking and specific evidence, not only of the dangers of at-large elections, but also of the level of adverse political effects that have been presented to this Court in its rare ventures into this part of the political thicket. In *Rogers v. Lodge*, 458 U.S. 613 (1982), the at-large system, combined with a history of social and political oppression, had made it possible for the white *minority* of Burke County, Georgia to prevent the "substantial" black majority ever from electing one of its members to local political office. Elected officials were completely unresponsive to the Black community, and ignored its interests.

Similarly, in *Mobile v. Bolden*, 446 U.S. 55 (1980), no Black representative had ever been elected, despite the fact that Blacks constituted more than 35 % of the population. Moreover, it was "highly unlikely that any time in the foreseeable future, under the at-large system, . . . a black candidate can be elected. . ." *Id.* at 98 (citation omitted). Blacks had been subjected to "massive" official discrimination that had been shown to undermine Black political participation. *Id.* at 97.

In one of the Court's earliest racial gerrymandering cases, *White v. Regester*, 412 U.S. 755 (1973), the offending at-large electoral system had elected only two Blacks and seven Hispanics since 1880. *Id.* 766, 768-69. The utter failure of the Black community's white representatives to respond to Black interests was exemplified by the fact that they had actually *led* the segregation fight in the 1950's. *Id.* at 767. The remedy was imposition of single-member districts.

In their plea for judicial intervention, the Republicans have claimed that A.B. 2X is a "gerrymander of historic proportions."[14] If indeed California has made gerrymandering history, where in the history of racial gerrymandering is there a case where Blacks won proportional representation in single-member districts, proved an ability to defeat redistricting statutes they opposed, amended the state constitution to bar racial gerrymandering, elected the governor and other powerful officials, failed to prove any interference with their exercise of the franchise or with any other aspect of their political life and yet persuaded a federal court that the Constitution required it to intervene on their behalf? The California Republicans' understanding of history and of the Equal Protection Clause presupposes a separate, privileged position for Democrats and Republicans in gerrymandering cases.

V.
THE CALIFORNIA REPUBLICANS' PROPOSED EFFECTS ALLEGATIONS FAIL TO SATISFY THEIR PLEADING BURDEN

The foregoing precedents make it clear that the proper constitutional inquiry cannot center merely on the present or imagined future results in a challenged set of

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[14] Reps. Cert. Pet. in No. 84-1226 at 10.

districts, or even on the win-loss column for elections generally. The inquiry instead must embrace the *entire* political process, and whether the complaining group plays a seriously degraded role in it:

> [*A*] *group's electoral power is not unconstitutionally diminished by the simple fact of an apportionment scheme that make winning elections more difficult* . . . [U]nconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or a gorup of voters' influence on *the political process as a whole.*

Bandemer, 106 S.Ct. at 2810 (emphasis added). Thus:

> [W]e have found equal protection violations only where a history of disproportionate results appeared *in conjunction with strong indicia of lack of political power* and the denial of fair representation. . . . [E]qual protection violations may be found *only where a history . . . of disproportionate results appears in conjunction with similar indicia.*

Id. at 2814 (emphasis added, citations omitted).

The California Republicans attempt to narrow *Bandemer* by suggesting that the Indiana Democrats' only failing was that they provided effects relating to a single election. Juris. Stat. at 18-19. But what the plurality actually said was:

> We have simply determined that aside from the election results, *none* of the facts found by the district court were relevant to the question of discriminatory effects . . . [and] that *no* constitutional discriminating effects were shown *as a matter of law* . . . .

Bandemer at 2815 n.20 (emphasis added). That is precisely what the court below correctly determined in this case.

A. The Allegations About the 1982 Interim Plan Fail.

The Republicans' Complaint against A.B. 2X and their Jurisdictional Statement trade on a misleading conflation of the temporary redistricting plan that the California Supreme Court ordered used in 1982 and A.B. 2X, which became a California law and governed the 1984 and 1986 elections. The conflation occurs in various forms. First, there are claims that the complaint alleged "not one, but three sets of elections." Second, there are claims that A.B. 2X "dismantled" Republican incumbencies.

The conflation is readily remedied. There was never a California statute that prescribed congressional districts in 1982. A bill, A.B. 301, was prevented from becoming law by the Republicans' referendum. It never had any independent force; instead, it was used on an interim basis by a unanimous decision of the California Supreme Court. *Assembly v. Deukmejian*, 30 Cal. 3d 638 (1982). The Republicans did not approve of that decision. They petitioned this Court and they lost. *Republican National Committee v. Burton*, 456 U.S. 941 (1982). That should end the argument about the interim plan.

The claim in Paragraphs 9, 20, 21 and 26 of the Complaint that A.B. 2X somehow "dismantled" safe Republican seats in 1982, is incorrect. In the 1982 elections, A.B. 2X did not even exist. Complaint, ¶¶ 11-13. In the two elections held under A.B. 2X (which was and is a law), the *only* incumbent ever adversely affected was *Democrat* Jerry Patterson, who lost in 1984 to conservative *Republican*, Robert Dornan. Juris. Stat. at 8 n.4.

The incumbency claim boils down to a claim that too many Democrats and too few Republicans have been elected in the 1980's. But "too many" needs a point from which to measure. For the Republicans, that point is a particular kind of proportionality.

B. The Proportionality Allegations Fail.

The core effect allegation of the Complaint is that the Republicans won a smaller proportion of seats than the proportion of votes cast state-wide for Republican congressional candidates.[15] As the Assembly's brief demonstrates, the Republicans in fact have won seats in almost exact proportion to their share of the official two-party registration. Below, the Republicans insisted that "proportionality is traditionally measured by comparing seats and votes" and that "proportionality is not properly measured by reference to . . . registration data." The Republicans' claim, then, reduces to a protest that they have achieved the "wrong kind" of proportional representation.

As a threshold matter, the putative "tradition" to which the Republicans refer has hardly been established in the case law. In cases dealing with gerrymandering allegations by minorities, seats/votes analysis is almost unknown. In this Court's own precedents, it has looked primarily at the plaintiff group's raw population. In *Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752 (1986)

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[15] The Republicans make a point of disavowing proportional representation as a standard. Juris. Stat. at 22. A review of the Complaint makes that disavowal perplexing. The core paragraph of the Complaint alleges "grossly disproportionate election results"and summarizes the effect of A.B.2X as follows:

> A.B.2X carves up the state in such a way as to allocate congressional districts to Democrats in numbers far in excess of Democratic voting strength and to Republicans in numbers far below Republican voting strength.

Complaint, ¶20. The Republicans' summary of *Bandemer* claims that *repeated* disproportionality (caused by district shapes and lack of competition) satisfies the constitutional effect test. Juris. Stat. at 18. If this is true, then the Constitution would require proportionality over the long run. The Republicans certainly appear to be singing what Professor Schuck has called "the siren's song of proportional representation."

this Court stated that "sustained [electoral] success" and "persistent proportional representation is inconsistent" with a statutory vote dilution claim. 106 S.Ct. at 2780. The Court was not referring to seats/votes proportionality, but to representation roughly proportional to *population*. *Id.* at 2779 n.35. The lower courts have often relied on registration data, as well. *See, e.g., Major v. Treen*, 524 F.Supp. 325, 335 (E.D. La. 1983); *Gingles v. Edmisten*, 590 F.Supp. 345, 357, 360 (E.D. N.C. 1984).[16]

Moreover, the seats/votes measure is a peculiarly inappropriate method for assessing elections in the single-member, plurality-winner systems that predominate in the United States. To begin with, it lumps together candidates who barely win with a plurality, and those who win by a heavy margin. It also fails to account for the fact that equipopulous districts often have dramatically different numbers of voters. For example, to win in an inner-city district may take far fewer votes than in an affluent suburban district with higher registration and turnout. In both situations, a single entry in the seats column will be coupled with very different entries in the votes column. Even more unwarranted is the assumption that every vote for every candidate of a given party expresses the same political goals.[17]

The ultimate question, however, is whether the federal courts will have any means to avoid protracted and politically intrusive trials in partisan gerrymandering cases. Where there exists a rough proportion between the

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[16] The defects of the seats/votes measure are manifold. *See, e.g.*, Schuck, *supra* p. 5, at 1325, 1357-61, 1372-77; Lowenstein & Steinberg, *The Quest for Legislative Districting in the Public Interest: Elusive or Illusory*, 33 UCLA L. Rev. 1, 49-64 (1985).

[17] As Professor Nelson Polsby observed below, there is no reason to expect that "the percentage of what [the Republicans] call Republican votes should bear some close proportional relationship to the percentage of Congressional seats won by Republican candidates." Declaration of Nelson W. Polsby, Paragraph 5.

number of plaintiff voters and the number of seats they hold, no claim should be allowed to proceed, unless seats/votes proportional representation is to become a constitutional imperative.[18]

C. The Allegations About "Competitiveness" Fail.

The Republicans rely heavily on their claim that almost all of California's congressional districts are "uncompetitive" or "safe" for their incumbents, and that the present distribution of seats between the two parties is "virtually immutable." They claim that, under *Bandemer*, the presence of such seats is an indicator of lack of political power, and listed "systematic elimination of political competition" below as an allegation "relevant to discriminatory effect."[19] The district court correctly rejected this competition claim.

First, while the California Republicans would have the Court believe that the pervasive success of incumbents is somehow a special property of California elections, the opposite is in fact the case. Incumbents of both parties were overwhelmingly reelected to the House in 1986, as 98% of those who ran retained their seats. *See*, Schuck,

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[18] For an argument in favor of such a requirement, *see* Note, *The Constitutional Imperative of Proportional Representation*, 94 Yale L.J. 163 (1984). In any case, the alleged deviation from seats/votes proportionally only amounts to three, four or five seats. Given the percentage of statewide votes cast for Republicans in 1982, 1984 and 1986, perfect seat/votes proportionality would yield 22, 22 and 21 seats, respectively. The Republicans actually won 17, 18 and 18 seats in these elections, respectively. These results closely parallel those in the 1974, 1976 and 1978 elections under the Special Masters' plan that the Complaint endorses. Complaint, ¶¶19, 25; *see* Appx. A.

[19] Since there are allegedly safe Republican seats and safe Democratic seats, it is hard to see how the alleged safe seats are discriminatory, unless the Republicans have too few of them. "Too few," of course, needs a benchmark, which unsurprisingly is again proportional representation.

supra p. 5, at 1373 n.179. California was only one of 36 states where there was no change in the partisan make-up of the congressional delegation. USA Today, Nov. 6, 1986, §A, at 7.

Second, the competition claim conflicts with the Republicans' insistence that seats and statewide votes should be proportional. It was undisputed below that Republicans won 48% of the two-party vote in 1982, 50% in 1984 and 47% in 1986. The Republicans insist that these state-wide figures are the most reliable way to measure the electorate's partisan wishes. Yet these figures have hardly changed. The Republicans' own theory provides no basis to expect any perceptible swings in the partisan composition of the Congressional delegation.

Third, the competitiveness allegations in *Badham* are only a recapitulation of rejected allegations in *Bandemer*. The record in *Bandemer* was that "the House map was designed to yield 56 'safe' Republican seats and 30 Democratic seats, with the remainder [4 seats] being "tossups." *Bandemer*, 106 S.Ct. at 2834. But this, and every other fact the Democrats proved, was irrelevant to the effects question "as a matter of law." *Id.* at 2810.

Fourth, this Court has already dealt with the "safe seats" problem in *Gaffney v. Cummings*, 412 U.S. 735 (1973). In that case, Democrats complained that the challenged plan was a political gerrymander because it locked in "a built-in bias in favor of the Republican Party." *Id.* at 739. The "bias" was built in by the creation of safe Republican and safe Democratic seats in a proportion based on "results in the preceding three statewide elections." *Id.* at 738. There were 70 safe Democratic seats and 55 to 60 safe Republican seats. *Id.* at 738 n.4. Thus, the plan was an archetypal "bipartisan gerrymander." This Court found no constitutional infirmity.

D. The Allegations About The Shapes of Districts Fail.

The Republicans complain that the "bizarre and irregular A.B. 2X district configurations" make voters confused about "the identity of their congressmember" and even make "physical access" to representatives more difficult. In addition, the odd shapes are said to make it difficult to attract "effective challengers" and for "Congressmembers to represent a district." Complaint, ¶24.

The Republicans are again relying on the kinds of allegations the Court rejected in *Bandemer*. Indiana Democrats alleged and proved that the challenged districts had "strange" shapes that "conspicuously ignore[d] traditional political subdivisions, with no concern for any adherence to principles of community of interest." *Bandemer*, 106 S.Ct. at 2833. The district court found "the potential for voter disillusion and nonparticipation is great." *Id.* These, like all the facts of *Bandemer*, were irrelevant to the effects threshold.

In *Gaffney v. Cummings*, the Court upheld "indecent" districts that "wiggle[d] and joggle[d]." The Court wrote, "compactness or attractiveness has never been held to constitute an independent federal constitutional requirement. . . ." *Gaffney*, 412 U.S. at 752 n.18.[20] Even as reform proposals, these goals are dubious. "All in all, the compact or homogeneous constituency has severe drawbacks for those who live in it. Certainly, it is not clear that setting a standard of compactness would solve more gerrymandering problems than it would create, or

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[20] This Court found the *Gaffney* districts to be essentially fair. Fair or not, there is no question that the districts were notably irregular in shape. In order to facilitate a comparison of the *Gaffney* and *Badham* districts, copies of the *Gaffney* districts, taken from the Joint Appendix in that case, are included as Appendix B.

at least perpetuate." A. Hacker, *Congressional Districting, The Issue of Equal Representation* 77 (1964). The Republicans do not even allege that only Republicans are forced to reside or run for office in districts with "uncouth" shapes, nor could they. Indeed, the districts whose shapes the Republicans most consistently criticize are districts with Democratic representatives and majorities. No equal protection issue is raised.

VI.
CONCLUSION

Indiana was the Democrats' redistricting *cause celebre* for the 1980's. California has been the Republicans'. The same constitutional principles that led this Court to reverse the Democrats' trial court victory in *Davis v. Bandemer* compelled the district court's rejection of the Republicans' mirror-image claims. The Court should accordingly deny jurisdiction for want of a substantial federal question, or alternatively, summarily affirm the judgment of the district court.

Respectfully submitted,

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June 24, 1988

APPENDIX A

ELECTION DATA FROM *Bandemer*, *Badham* and *Gaffney*

State	Plaintiffs' % of Seats	Plaintiffs' Aggregate % Votes	Seats/Vote Gap
Indiana (1982) (*Bandemer*-House)	43	52	9
California (1974)* (U.S. House)	35 (15 seats)	41	6
California (1976)* (U.S. House)	33 (14 seats)	44	11
California (1978)* (U.S. House)	40 (17 seats)	48	8
California (1980)* (U.S. House)	49 (21 seats)	51	2
California (1982)** (U.S. House)	38 (17 seats)	48	10
California (1984)*** (U.S. House)	40 (18 seats)	50	10
California (1986)*** (U.S. House)	40 (18 seats)	47	7
Connecticut (1972) (*Gaffney*-House)	38	47	9

* Under Special Masters' Plan.

** Under Interim Plan.

*** Under A.B. 2X.

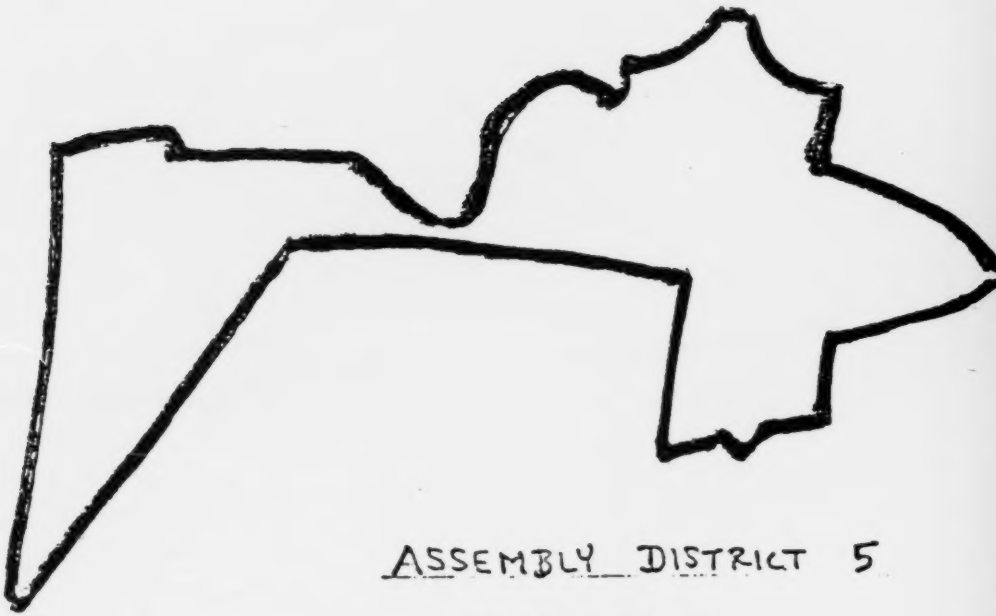
Sources:

California aggregate votes data compiled from Official Statement of the Vote, (1974-86), of which judicial notice was taken below.

Connecticut data from Brief for Appellees, *Gaffney v. Cummings*, 412 U.S. 735 (1973) (No. 71-1476) at 36.

Indiana data from *Davis v. Bandemer*, 478 U.S. 109, 106 S.Ct. 2797, 2811 (1986).

APPENDIX B



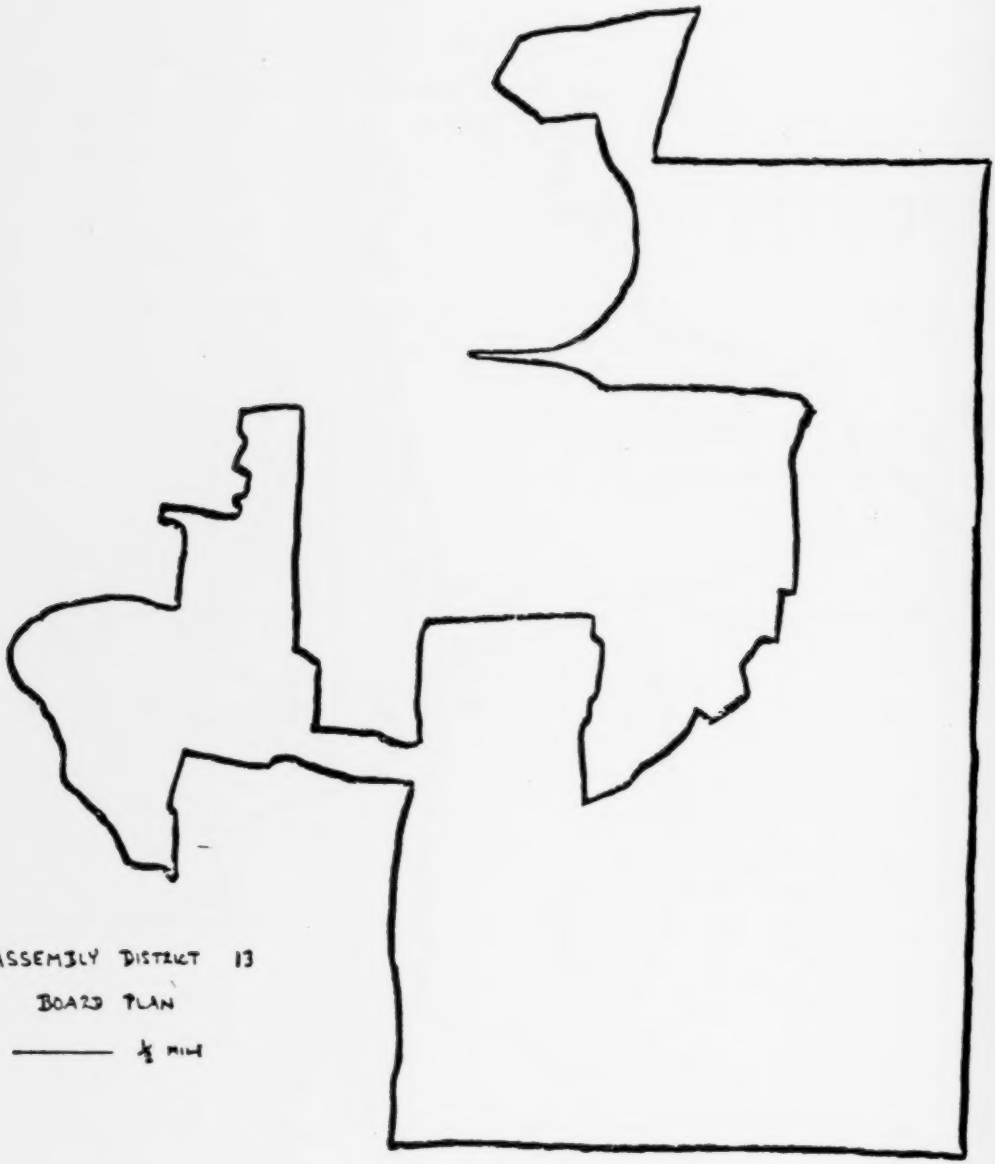
H-5

ASSEMBLY DISTRICT 12

BOARD PLAN

——— ½ MILE

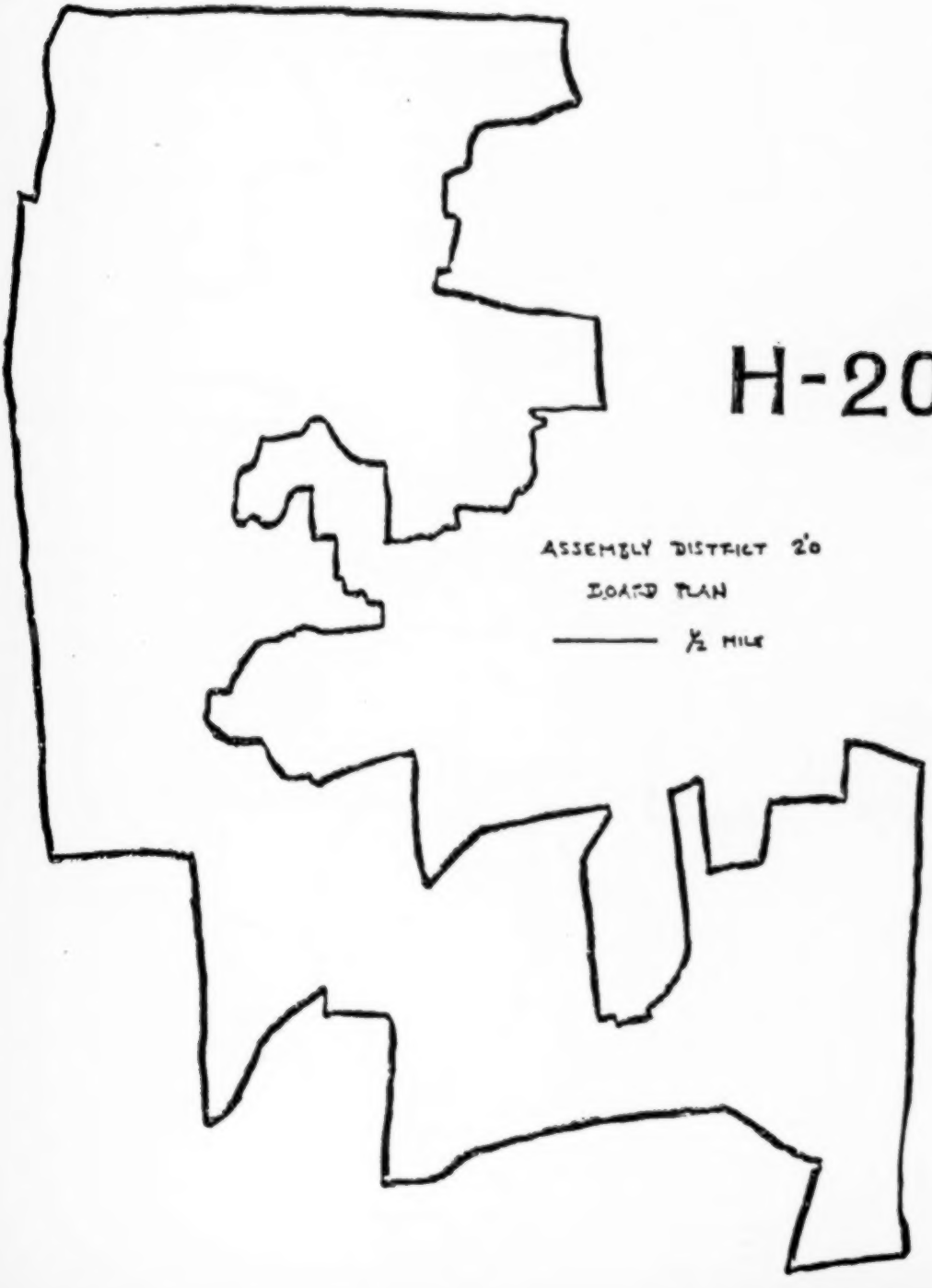
H-12



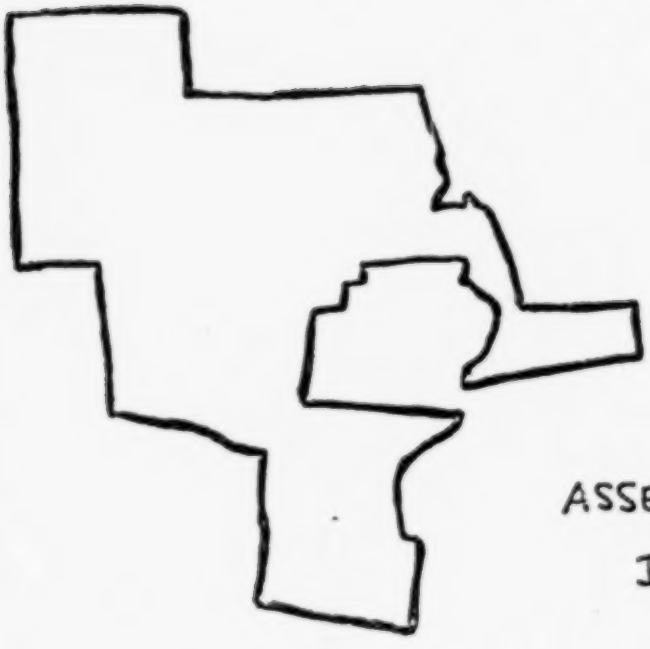
H-13

H-15
ASSEMBLY DISTRICT 15
BOARD PLAN
½ mile

H-19
ASSEMBLY DISTRICT 19
BOARD PLAN
½ MILE


H-20
ASSEMBLY DISTRICT 20
BOARD PLAN
½ MILE

H-41



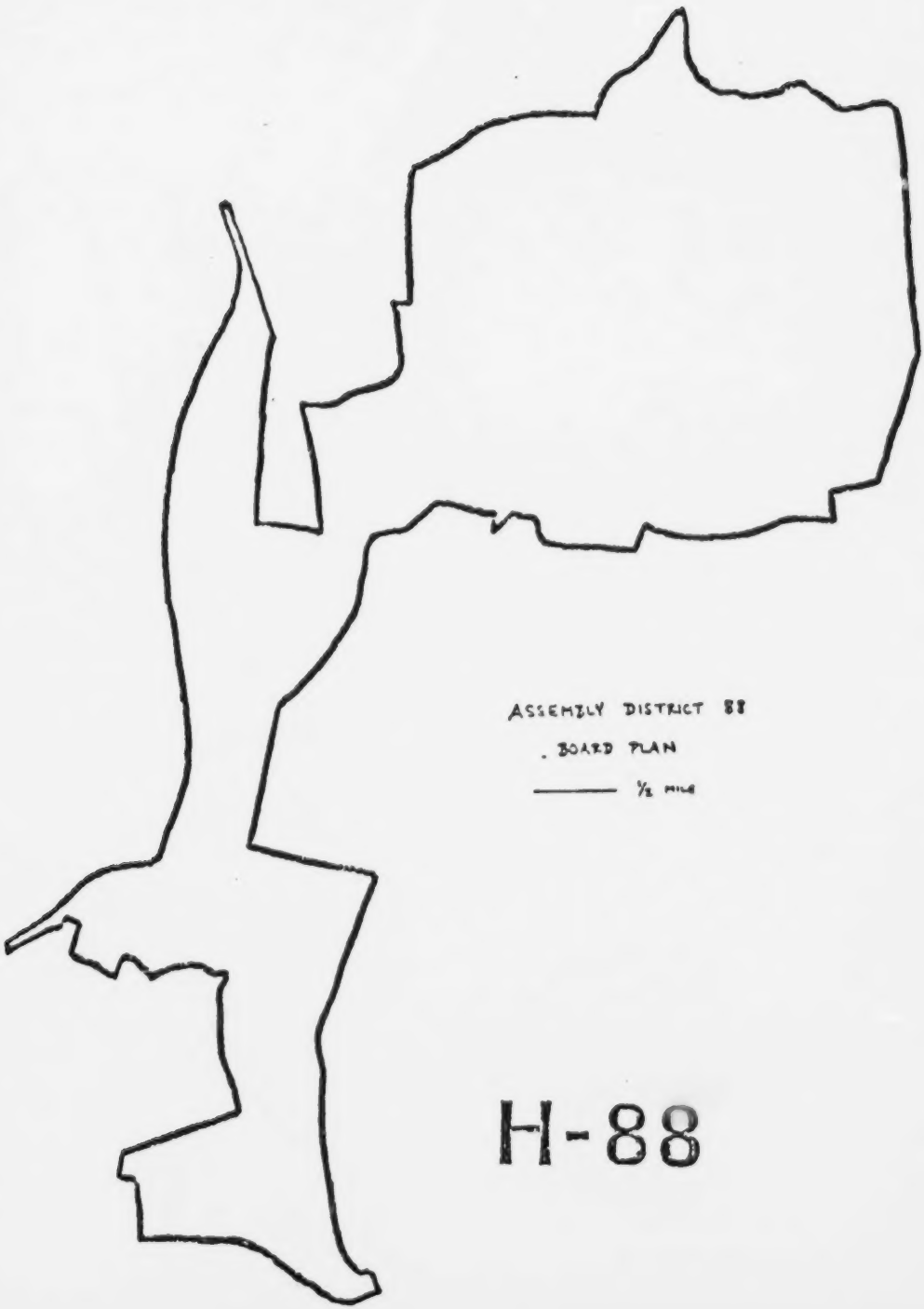
ASSEMBLY DISTRICT 5

BOARD PLAN

1 5 MILES

H-50

H-85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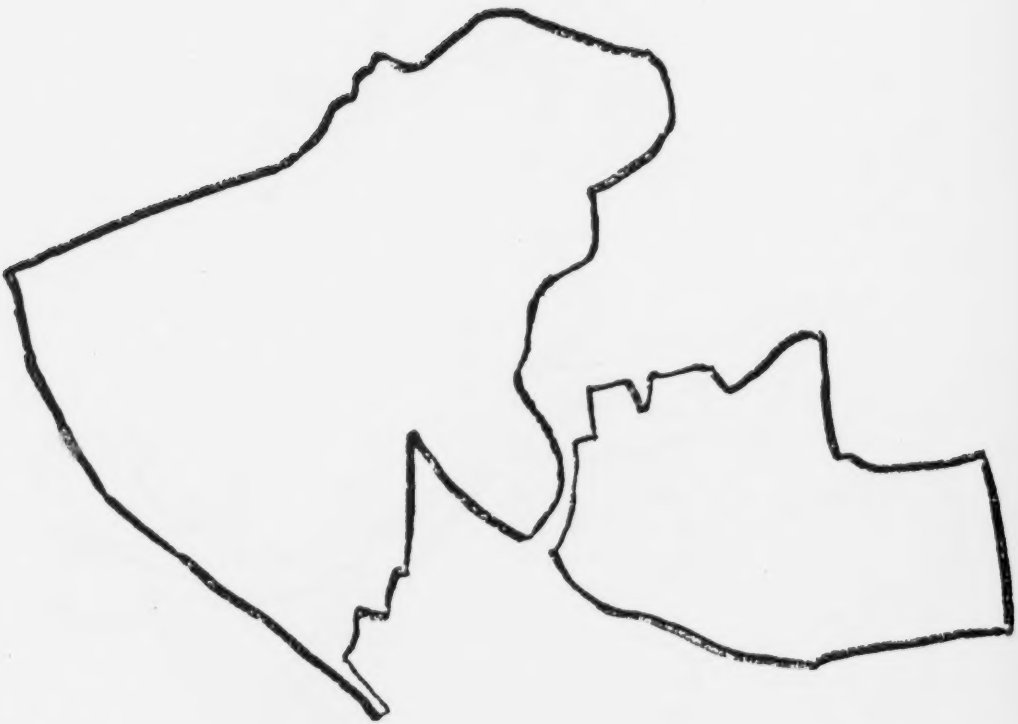
BOARD PLAN
½ mile
H-88



ASSEMBLY DISTRICT 104

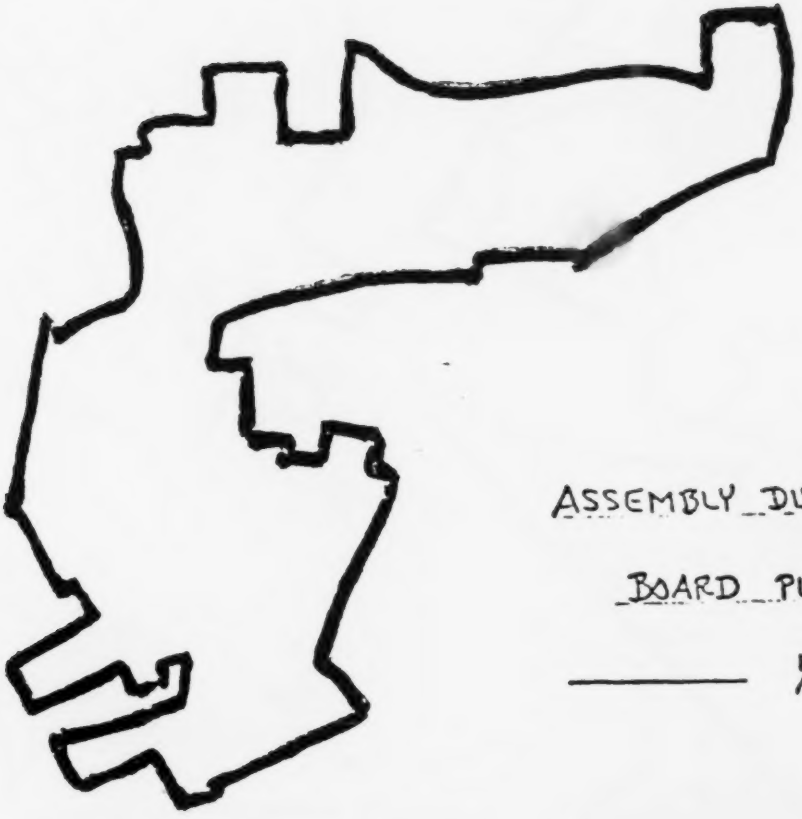
BOARD PLAN

——— ½ MILE

H-104

ASSEMBLY DISTRICT 122
_BOARD PLAN
½ MILE
H-122

H-125
ASSEMBLY DISTRICT 125
BOARD PLAN
½ MILE



ASSEMBLY DISTRICT 127

BOARD PLAN

——— ½ MILE

H-127

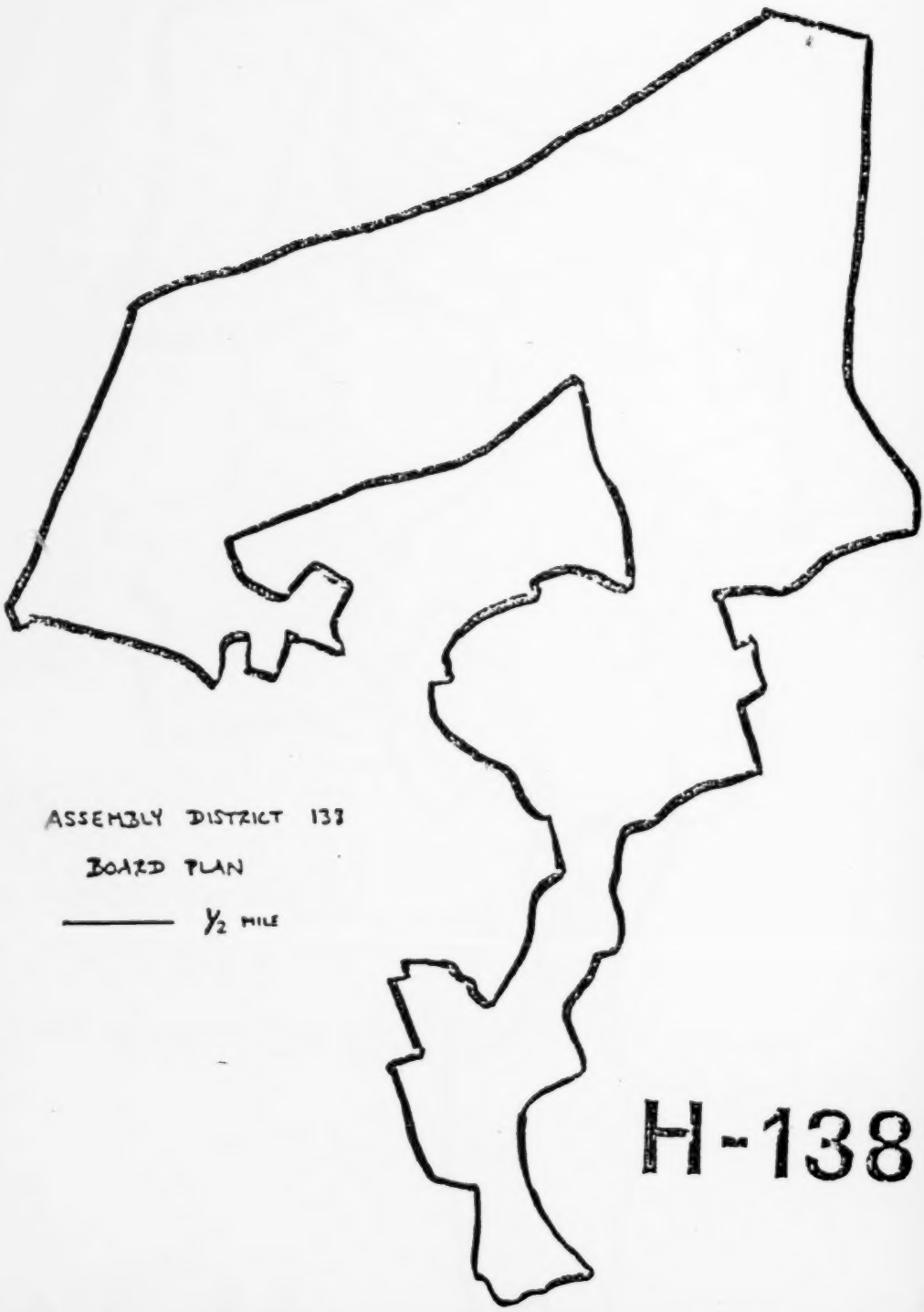
ASSEMBLY DISTRICT 131

BOARD PLAN

——— ½ MILE

H-131

ASSEMBLY DISTRICT 134
H-134

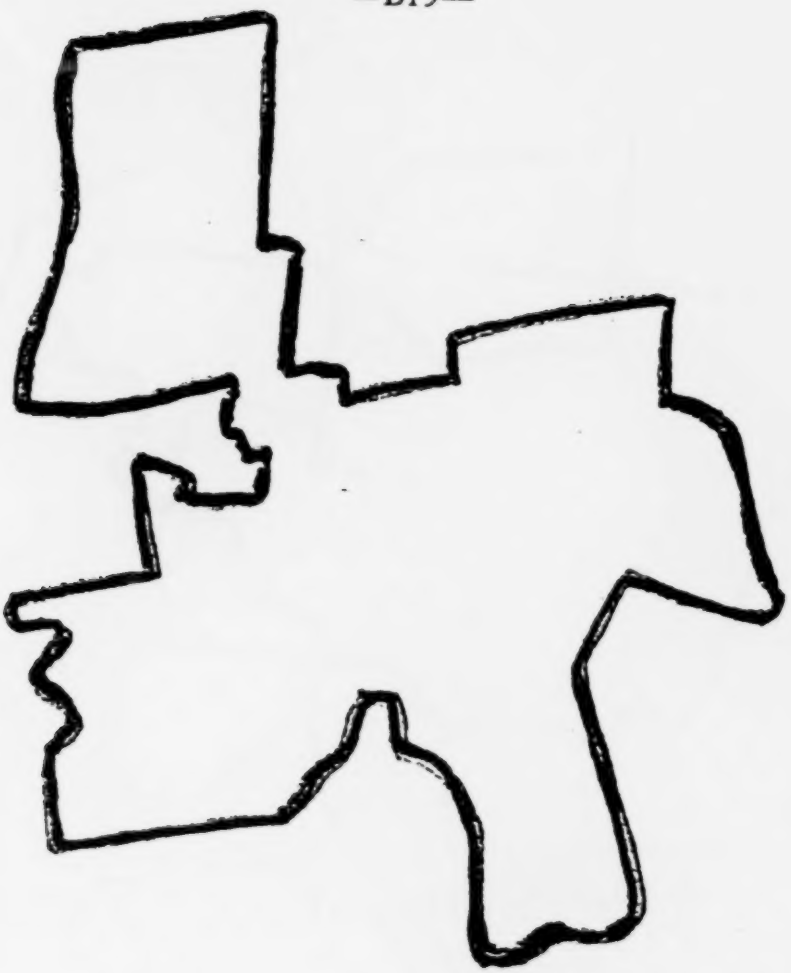

ASSEMBLY DISTRICT 138
BOARD PLAN
½ MILE
H-138

ASSEMBLY DISTRICT 140

BOARD PLAN

½ MILE

H-140



4th SENATORIAL DISTRICT

BOARD PLAN

1 5 MILES

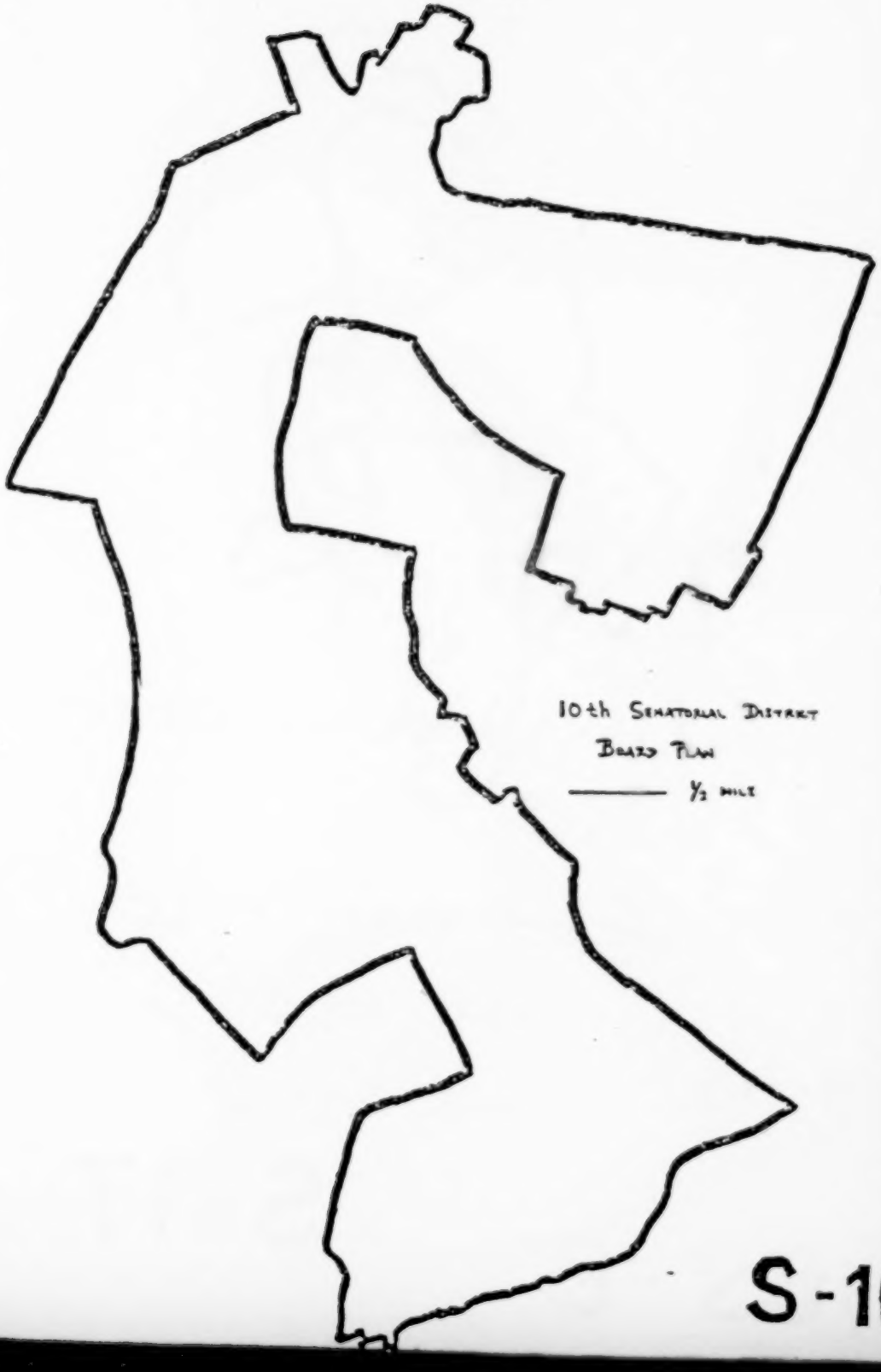
S-4

9th SENATORIAL DISTRICT

BOARD PLAN

1 5 MILES

S-9


10th Senatorial District
Board Plan
½ mile
S-10

17th SENATORIAL DISTRICT

BOARD PLAN

1 5 MILES

S-17

28th SENATORIAL DISTRICT

BOARD PLAN

1 5 MILES

S-28

S-29

32nd SENATORIAL DISTRICT

BOARD PLAN

1 5 MILES

S-32

Supreme Court, U.S.
FILED
SEP 23 1988
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No. 87-1818

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ROBERT E. BADHAM, *et al.*,

Appellants,

v.

MARCH FONG EU, *et al.*,

Appellees.

Appeal from the United States District Court for the Northern District of California

APPELLANTS' BRIEF IN OPPOSITION TO MOTION OF THE CALIFORNIA DEMOCRATIC CONGRESSIONAL DELEGATION TO DISMISS OR AFFIRM

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

No. 87-1818

ROBERT E. BADHAM, *et al.*,

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v.

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APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

APPELLANTS' BRIEF IN OPPOSITION TO MOTION OF THE CALIFORNIA DEMOCRATIC CONGRESSIONAL DELEGATION TO DISMISS OR AFFIRM

INTRODUCTION

Appellants have, in their prior briefs, already anticipated and responded to most of the arguments of the California Democratic Congressional Delegation (the "Democratic Delegation") against the Court's exercise of jurisdiction herein. The singular purpose of this brief is to respond to the Democratic Delegation's superficially attractive—but totally misleading—chart purporting to prove that this case is a "mirror image"

of *Davis* v. *Bandemer*, 106 S. Ct. 2797 (1986). *See* Motion to Dismiss or Affirm ("Motion") at 2 & 14-16. These arguments are disingenuous. The contrasts between this case and the record in *Davis* v. *Bandemer* are not so easily camouflaged.

ARGUMENT

Appellants alleged and could prove key facts which were lacking in the record in *Davis* v. *Bandemer* and in the district court's opinion. The *Bandemer* plurality underscored the absence of these facts:

- The district court erred in "[r]elying on a single election to prove unconstitutional discrimination. . .";
- The district court "did not find that the Democrats could not in one of the next few elections secure a sufficient vote to take control of the assembly" and "did not ask by what percentage the statewide Democratic vote would have had to increase" to take control;
- The district court "declined to hold that the 1982 election results were the predictable consequences" of redistricting or a "reliable prediction" of future results;
- "Nor was there any finding that the 1981 reapportionment would consign the Democrats to a minority status" throughout the 1980's."

See *Davis* v. *Bandemer*, 106 S. Ct. at 2812. Not surprisingly, the Democratic Delegation's chart does not acknowledge these factors. A candid comparison of

Appellants' complaint with the plurality opinion and the record in *Davis* v. *Bandemer* demonstrates the lack of support for the Democratic Delegation's "mirror image" argument and, in fact, presents a compelling case for the exercise of this Court's jurisdiction.

ALLEGATIONS IN THE COMPLAINT BELOW:	RECORD IN *DAVIS* V. *BANDEMER*[2]:
1. Disproportionate results in three separate elections over six years (¶s 26 & 27; Juris. St. at p. 9 and App. G at pp. 200a et seq.).[1]	1. Disproportionate results in one House election; proportionate results in Senate. *Davis* v. *Bandemer*, 106 S. Ct. at 2801, 2813 n.16.
2. Republicans cannot gain a majority of seats (¶ 27).	2. With a net two percentage point vote increase, Democrats could theoretically gain majority in House. *Davis* v. *Bandemer*, Brief of Appellants at pp. 22-23.
3. 1982 election results are "predictable consequence" of redistricting and "reliable predictor" of future election results (¶ 27).	3. No parallel findings. *Bandemer* v. *Davis*, 603 F.Supp. 1479, 1486 (S.D. Ind. 1984).
4. Republicans consigned to minority status throughout the decade (¶ 27).	4. No parallel findings. *See* #2 *supra*.

[1] *Cf. Davis* v. *Bandemer*, 106 S. Ct. at 2814, n. 17 (projected election results may support a partisan gerrymandering claim even where *no* election has been held).

[2] The cited pages of the Brief of Appellants in *Davis* v. *Bandemer* contain specific references to the record in the district court.

5. Redistricting eliminated electoral competition (¶¶ 20 & 28. Juris. St. at p. 9 and App. G at pp. 200a *et seq.*)	5. 39 competitive races in 100 seat House. *Davis* v. *Bandemer*, Brief of Appellants at p. 22.
6. District configurations combined with vote projections can predict future unfair results (¶ 27). *See Davis* v. *Bandemer* 106 S. Ct. at 2815.	6. No parallel findings.
7. Districts of six Republican incumbents unnecessarily collapsed into three districts; no Democrat similarly treated (¶ 21(a)).	7. No parallel finding.
8. As a result of Democratic gerrymander, Republicans lost 4 seats; Democrats gained 6 seats (4 formerly Republican and 2 new seats) (¶ 9 & 26).	8. After so-called Republican "gerrymander," Democrats *gained 9 seats* and Republicans *lost 9 seats*, including 7 incumbents. *Davis* v. *Bandemer*, Brief of Appellants at pp. 8 & 34.

Appellants submit that the effects alleged below are "sufficiently serious to require" this Court's intervention. *See Davis* v. *Bandemer*, 106 S. Ct. at 2811. Unless this Court intervenes, the worst gerrymander of the 1980s will become the model for the 1990s. One commentator put it this way:

> One might add that the California congressional stakes are quite real in national terms. With 45 districts (and more likely after 1990), the state accounts for more than one-tenth of the 435 seats of the House of Representatives. And, in the more immediate context of judicial policy making, as the court goes in the forthcoming California case, so may go the nation as far as the permissible limits of partisan gerrymanders.

Longley, *Partisan Gerrymandering,* 2 International Newsletter, Intl. Pol. Sci. Assn. 29 (Comparative Representation and Electoral Systems Study Group, No. 1) (1987).

CONCLUSION

The Democratic Delegation's motion to dismiss or affirm should be denied, and probable jurisdiction noted.

Respectfully submitted,

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September 23, 1988

No. 87-1818

Supreme Court, U.S.
FILED
DEC 14 1988
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CLERK

In the Supreme Court
OF THE
United States

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On Appeal From The United States District Court For The Northern District Of California

SUPPLEMENTAL MEMORANDUM OF THE MEMBERS OF THE CALIFORNIA DEMOCRATIC CONGRESSIONAL DELEGATION IN SUPPORT OF MOTION TO DISMISS OR AFFIRM

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I.

THE JURISDICTIONAL ISSUE

In its Brief Re: "Petition for Rehearing (And Related Relief)," the Delegation considered Appellants' uncertainty about the proper forum for their challenge to the district court's order, which is currently before both this Court and the Ninth Circuit.[1] Since filing that brief, the Delegation has not identified any addition authorities or considerations that bear on the issue. Accordingly, the

[1]Since Appellants have let the stay of their Ninth Circuit appeal expire, the appeal is apparently underway. On November 23, 1988, the District Court transmitted the Certificate of Record and hearing transcripts to the Ninth Circuit.

Delegation rests on the discussion it set forth in that brief.

II.

THE DISSENT UNDERLINES THE ABSENCE OF ANY SUBSTANTIAL FEDERAL QUESTION IN THIS APPEAL

A. The Bandemer Proof and the Parallel Badham Allegations Both Fall Far Short of Satisfying Any Acceptable Threshold Constitutional Test for Partisan Gerrymander Claims.

Perhaps the central disagreement in the Appellants' and the Delegation's respective briefs is whether this case is materially different from *Davis v. Bandemer*. If indeed *Badham* merely presents a California Republican version of the Indiana Democrats' constitutionally inadequate claims in *Bandemer* — or less — then *Bandemer* forecloses *Badham* and plenary consideration of this appeal is unnecessary. While Appellants insisted that the two cases were "strikingly similar"[2] when the Indiana Democrats prevailed at trial, now that this Court found the *Bandemer* evidence so wanting, Appellants respond to the Delegation's chart detailing the cases' striking similarities with the charge: "disingenuous." Appellants' Brief in Opposition to Delegation's Motion to Dismiss or Affirm at 2.

Even the dissent disagrees. In concluding that Appellants' case was "largely foreclosed" by *Davis v. Bandemer*, Judge Schnacke was able to discern but a single signifi-

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[2]This was the characterization Appellants urged on this Court when they sought to have their case heard together with *Bandemer* in 1985. *See* Petition for Writ of Certiorari at 6 n.5, 23, *Badham v. Secretary of State of California*, 470 U.S. 1084 (1985) (No. 84-1226).

cant difference between the two cases: duration. Petition for Rehearing at 1a. That single discerned difference, however, is wholly inadequate to permit a different result in California from the one this Court mandated in Indiana. To have alleged a claim that could have passed the *Bandemer* threshold, the California Republicans would have had to have made allegations wholly different in kind from those that this Court so flatly rejected in *Bandemer*. No such allegations were made, nor could they have been.

It is important to recall that the Indiana Democrats alleged and proved a body of facts that accords well with the popular notion of a gerrymander. They proved that the Republicans had excluded both the Democrats and the voting public from any participation in the drafting of the plan. *Davis v. Bandemer,* 478 U.S. 109, 106 S. Ct. 2797, 2802 n.5, 2833 (1986). They proved that the plan was passed on strict party lines through a hasty and unorthodox legislative procedure that was controlled by a solidly Republican legislature and backed up by a Republican governor. *Id.* at 2800, 2801, 2833. They proved that the sole and admitted purpose of the plan was to favor Republicans and harm Democrats. *Id.* at 2802 n.5, 2834. They proved that the plan exploited "strange" districts that "conspicuously ignored" traditional "neutral" criteria while they "carved up" counties, cities and even townships for partisan gain. *Id.* at 2802, 2833. They proved that the Republicans gave "no consideration" to communities of interest, and disadvantaged black voters in a particularly "hard and harsh" manner. *Id.* at 2834; *Bandemer v. Davis,* 603 F. Supp. 1479, 1488 (S.D. Ind. 1984). The Republicans themselves admitted that their House plan was designed to establish 56 seats that would be safely held by Republicans, but only 30 safe Democratic seats. *Davis v. Bandemer,* 106 S. Ct. at 2834. And the Democrats even proved that the Republicans selec-

tively employed at-large districts in certain areas to "stack" and "pack" Democratic citizens and thereby dilute their votes. *Id.* at 2801. What the Indiana Democrats proved explains why Democrats regarded the *Bandemer* case as a cause celebre.

This Court, however, found these facts wholly irrelevant to the required threshold showing of unconstitutional effect. "[A]side from the election results, *none* of the facts found by the District Court were relevant to the question of discriminatory effects . . . [N]o unconstitutional effects were found as a matter of law. . . ." *Id.* at 2815 n.20 (emphasis added). The parallel allegations in the present case, outlined at pages 14-16 of the Delegation's Motion to Dismiss or Affirm, can be no less irrelevant. What is left, then, in each case, are claims about election results, as the dissent below recognized. But *Bandemer* clearly teaches that such claims, standing alone, are not enough.

The *Bandemer* plurality opinion made two critical distinctions. First, it separated the issue of partisan intent from that of unconstitutional effect. It assumed that the requisite intent would usually be apparent in the context of a partisan gerrymander claim. *Id.* at 2808. Second, it re-emphasized the distinction, drawn in the racial gerrymandering cases, between non-proportional election results on the one hand, and indicia of lack of fair representation or power in the political process as a whole, on the other:

> [T]he mere fact that a particular apportionment scheme makes it more difficult for a particular group in a particular district to elect the representatives of its choice does not render that scheme constitutionally infirm. This conviction, in turn, stems from the

> perception that the power to influence the political process is not limited to winning elections. An individual or a group of individuals who votes for a losing candidate is usually deemed to be adequately represented by the winning candidate and to have as much opportunity to influence that candidate as other voters in the district. We cannot presume in such a situation, without actual proof to the contrary, that the candidate elected will entirely ignore the interests of those voters.[3] This is true even in a safe district where the losing group loses election after election. Thus, a group's electoral power is not unconstitutionally diminished by the simple fact of an apportionment scheme that makes winning elections more difficult . . .

Id. at 2810. Accordingly, the Court concluded:

> [U]nconstitutional discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or group of voters' influence on the political process as a whole.

Id. The plurality then described what would constitute such "degradation":

> [W]e have found equal protection violations only where a history of disproportionate results appeared in conjunction with strong indicia of lack of political power and the denial of fair representation. In those

---

[3]In response to this requirement, Appellants point weakly to paragraphs 20, 26, and 28 of their Complaint. Juris. Stat. at 15. The inadequacy of those allegations is underlined by the later claim that they "were willing" to produce evidence or allegations on the issue (Juris. Stat. at 16), but did not allege any of them because "it was clear to appellants" that the district court would not have found these allegations sufficient. Juris. Stat. at 20 n.10.

> cases, the racial minorities asserting the successful equal protection claims had essentially been shut out of the political process. . . . [T]hese prior cases lead to the analogous conclusion that equal protection violations may be found only where a history . . . of disproportionate results appears in conjunction with similar indicia.

Id. at 2814. It was precisely the absence of these kinds of indicia that doomed the Indiana Democrats' claims in *Bandemer* and the California Republicans' claims in *Badham*.

Only an entirely new constitutional test, without historical precedent, could have brought about a different result. Justice Marshall's dissent in *Mobile v. Bolden* provides a generous review of this Court's gerrymandering precedents. Even in urging a more expansive reading of those cases, Justice Marshall found no constitutional history to support the kind of test that the *Bandemer* and *Badham* plaintiffs would have needed:

> Unconstitutional vote dilution occurs only when a discrete political minority whose voting strength is diminished by a districting scheme proves that historical and social factors render it largely incapable of effectively utilizing alternative avenues of influencing public policy. In these circumstances, the only means of breaking down the barriers encasing the political arena is to structure the electoral districting so that the minority has a fair opportunity to elect candidates of its choice.
>
> The test for unconstitutional vote dilution, then, . . . requires electoral minorities to prove far more than mere lack of success at the polls.

Mobile v. Bolden, 446 U.S. 55, 110 n. 7 (1980) (citations omitted). Justice Marshall concluded:

> The constitutional protection against vote dilution found in our prior cases does not extend to those situations in which a group has merely failed to elect representatives in proportion to its share of the population. To prove unconstitutional vote dilution, the group is also required to carry the far more onerous burden of demonstrating that it has been effectively fenced out of the political process. . . . The vote dilution doctrine can logically apply only to groups whose electoral discreteness and insularity allow dominant political functions to ignore them.

Id. at 122. Appellants' case could only have gone forward under a special rule that relieved the major political parties of the kind of burdens imposed on racial minorities in proving a constitutional violation.

Even Appellants' election result allegations fall well short of what could plausibly constitute a sufficient predicate for intervention by the federal judiciary. Election results under A.B.2X are nearly or exactly proportional. The facts of which the District Court took judicial notice demonstrated that Republicans and Democrats have been elected in a rough proportion to their share of the two-party vote in each of the three elections that have taken place under A.B.2X.[4] In 1984 and 1986, only three or four

---

[4]As was demonstrated below and in the Assembly's Motion to Dismiss, Appellants (all of whom are alleged to be registered Republicans) also benefit from representation almost exactly proportional to their share of the two parties' respective registered voters. Justice Marshall's reference to proportionality to a group's "share of the population" demonstrates that the seats/votes measure of proportionality enjoys no special constitutional privilege. *See* Delegation's Motion to Dismiss or Affirm at 26.

seats separated the elections from perfect seats-votes proportionality. *See* Delegation's Motion to Dismiss or Affirm at 27 n.18, Appendix A. In 1988, Republicans received but *one* fewer seat than they would have won under a rigid proportional representation scheme corrected for differential turnout in the forty-five Congressional districts.[5] As the record considered by the District Court revealed, more disproportional results occurred, election after election, under the Special Masters' plan that the Complaint itself sets up as a neutral ideal. *See* Complaint, ¶¶ 9, 25. In 1974, 1976 and 1978, the first three elections in which it was used, the Special Masters' plan gave Republicans 35, 33 and 40 percent of the seats, respectively, for 41, 44 and 48 percentage, respectively, of the two-party vote. *See Official Statement of the Vote*, 1974,

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Appellants' belated attack on California's registration data is misconceived; registration data, like census data, may not always be precisely accurate. But precise proportionality is not required. In any case, the record below is replete with citations to registration data by Appellants, whose early motion for preliminary injunction relied heavily on an analysis of that data. Even had the district court relied on the registration data in dismissing the Complaint, Appellants could hardly assert that reliance as error.

[5]In the 45 separate 1988 congressional elections, Republican candidates and Democratic candidates received 3,929,696 and 4,675,678 votes, respectively. Turnout in these 45 districts varies significantly; for example, in District 14, there were 267,920 votes cast, while in District 25, only 94,108 votes were cast. This differential, of course, skews the seats/votes analysis. See B. Cain "The Reapportionment Puzzle" at 75-76; Lowenstein & Steinberg, *The Quest for Legislative Districting in the Public Interest, Elusive or Illusory?*, 33 U.C.L.A. L. Rev. 1, 49-52 (1985). Correcting for turnout, the Republicans and Democrats received, respectively, 42.6 and 57.4 percent of the two-party vote. 42.6 percent of the 45 seats is 19.2 seats; the Republicans won 18. *See* Appendix A. Even without correcting for turnout, the Republicans received only 45.7 percent of the two-party vote, which would have yielded 20.6 seats.

1976, 1978; Delegation's Motion to Dismiss or Affirm, Appendix A. Does this persistent departure from exact proportionality indicate a deprivation of constitutional rights at the hands of the Masters? The slight deviations from exact seats/votes proportionality under A.B.2X are *de minimis* and less even that the deviations under Appellants' "neutral" ideal. Only if the Constitution were to require exact or almost exact seats/votes proportionality could the effects alleged by Appellants be said to satisfy a reasonable threshold requirement.

The preceding analysis demonstrates that the inadequacies of Appellants' allegations of effects go far beyond what could be remedied by allegations about their duration. But even the allegations of duration fall short. The Complaint pointedly engages in no prognostication past the 1990 elections, contrary to the suggestion in the dissent. Complaint, ¶ 27. The reason for this restraint is simple. The political system in California, at least insofar as it affects congressional elections, is not one where an elected body could draw lines to perpetuate itself decade after decade, free from political checks and balances. The Constitution requires that the California Legislature and the governor soon to establish a new redistricting plan, (with an expected five additional seats) for congressional elections in the 1990's. The Republicans have now controlled the office of the governor for two terms. As Ronald Reagan demonstrated in 1972, the governor has the power to veto redistricting bills that he perceives as harmful to his party's interest. *See Legislature v. Reinecke,* 6 Cal.3d 595, 99 Cal.Rptr. 481, 492 P.2d 385 (1972). Even if they were to lose the governorship, the Republicans will also have the power of the referendum, as they did in 1982, to veto by popular vote any redistricting bill of which they disapprove. *Assembly v. Deukmejian,* 30 Cal.3d 638, 180 Cal.Rptr. 297, 639 P.2d 939 (1982). Their Complaint

admits that they used this aspect of the political process with "overwhelming" success in 1982 but does not explain why they did not even attempt to repeat this success in a challenge to A.B.2X. Complaint, ¶ 11.

B. The Dissent's Electoral Competition Analysis Is Flawed

The remainder of the dissent consists of a plea for increased competitiveness in congressional elections. There can be no gainsaying that elections in the United States have come increasingly to favor incumbents. *See* Schuck, *The Thickest Thicket: Partisan Gerrymandering and Judicial Regulation of Politics,* 87 Colum. L. Rev. 1325, 1374-75 (1987). Indeed, in the 435 congressional elections that recently took place, only 6 incumbents lost and only 9 seats changed parties. Cohen, *The New Congress; Election '88,* 20 Nat'l. Journal 2859, 2860 (1988). But the suggestion that the Constitution requires this Court to intervene to increase competition and to lessen the power of incumbents is misguided on several grounds.*

To begin with, the task would call for a roving judicial commission over almost all aspects of political life. Political analysts assign a wide variety of causes to the power of incumbency, including the availability of media coverage, the franking privilege, and greater access to contributions. *See, e.g.,* Schuck, *supra,* at 1375-77; Common Cause, "Toward a System of Fair and Effective Representation," 17-24 (1977).

---

*For a review of the merits and defects of a constitutional "competitiveness" criterion, *see* Lowenstein & Steinberg, *supra,* at 37-44; B. Cain, *supra,* at 67-68.

Second, it is at best unclear what constitutional provision could be said to authorize such a commission. It could not be the Equal Protection Clause, since there are apparently-entrenched incumbents of *both* parties in California and elsewhere. If it is the *proportion* of such incumbents that is said to be in need of correction, then the Court is again being directed towards a requirement of proportional representation, which it has resolutely resisted. At a minimum, the Court would have to see its way clear to overruling *Gaffney v. Cummings,* which upheld a redistricting plan concededly designed to apportion safe seats to each party roughly in proportion to its estimated share of the voters statewide.

Finally, the application of a constitutional anti-incumbency principle to A.B.2X would be perplexing. The election results of which the District Court took judicial notice demonstrate that, since A.B.2X took effect, the Democrats have received a slightly *increasing* percentage of the state-wide vote. *See* Delegation's Motion to Dismiss or Affirm, Appendix A and Appendix A herein. Yet during this same period, it was the *Republicans* who gained one seat, which the Democrats lost to the highly conservative Republican partisan, Robert Dornan.[6] Even if the constitution did command that congressional districts must promptly respond to the changing barometer of partisan preference, California's temperate partisan weather would not dictate any perceptible swing in the composition of its congressional delegation, and would certainly not call for greater Republican gains.

---

[6]The district in which the Republicans scored this victory was one that Appellants had singled out as an example of misshapen districts that locked in Democrats. The day after the election, Mr. Dornan declared: "I have made this into a safe conservative district." Los Angeles Times, Nov. 5, 1986 at Pt. I, p.3.

III.

CONCLUSION

California is the Republicans' Indiana, only less. The dismissal below followed necessarily from the reversal this Court handed to the *Bandemer* plaintiffs. A contrary result is possible only if the major political parties are to be the beneficiaries of a special rule that would make it easier for those parties to present a gerrymander claim than it is for racial minorities, and only if the Constitution were to require essentially exact seats/votes proportionality.

Respectfully submitted,

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APPENDIX A

Semi-Official Canvass of the Vote

November 8, 1988

General Election

Compiled by
MARCH FONG EU
Secretary of State

Summary of Votes Cast for Congress

1st District	
Bosco, Dem-Inc	150,714
Vanderbilt, Rep	67,507
Fried, P&F	20,960
2nd District	
Herger, Rep-Inc	136,426
Meyer, Dem	89,616
Pendery, L	6,118
3rd District	
Matsui, Dem-Inc	175,112
Landowski, Rep	70,723
4th District	
Fasio, Dem-Inc	174,436
5th District	
Pelosi, Dem-Inc	113,838
O'Neill, Rep	26,303
Zuur, P&F	3,587
Grove, L	3,124
6th District	
Boxer, Dem-Inc	160,805
Steinmetz, Rep	57,044
7th District	
Miller, Dem-Inc	158,451
Last, Rep	71,631
8th District	
Dellums, Dem-Inc	152,380
Cuddihy, Rep	69,412
Condit, P&F	5,049

9th District	
Stark, Dem-Inc	145,917
Hertz, Rep	53,797
10th District	
Edwards, Dem-Inc	132,732
Watson, L	21,225
11th District	
Lantos, Dem-Inc	138,579
Quraishi, Rep	47,032
Wade, L	4,586
Martinez, P&F	2,804
Kudrovzeff, Al	1,903
12th District	
Campbell, Rep	124,151
Eshoo, Dem	112,442
Grey, L	5,535
13th District	
Mineta, Dem-Inc	132,802
Sommer, Rep	58,706
Webster, L	6,062
14th District	
Shumway, Rep-Inc	167,478
Malberg, Dem	100,442
15th District	
Coelho, Dem-Inc	111,771
Harner, Rep	45,479
Harris, L	3,408
16th District	
Panetta, Dem-Inc	168,506
Monteith, Rep	45,711
17th District	
Pashayan, Rep-Inc	122,253
Lavery, Dem	49,345
18th District	
Lehman, Dem-Inc	120,448
Linn, Rep	51,807
19th District	
Lagomarsino, Rep-Inc	108,257
Hart, Dem	105,981
Donaldson, L	2,700
20th District	
Thomas, Rep-Inc	155,282
Reid, Dem	59,454
Bersohn, L	4,006
21st District	
Gallegly, Rep-Inc	171,073
Stevens, Dem	72,059
Jay, L	5,233
22nd District	
Moorhead, Rep-Inc	155,966
Simmons, Dem	58,904
Isaacson, P&F	6,036
Brown, L	4,053
23rd District	
Beilenson, Dem-Inc	140,189
Salomon, Rep	72,888
Vernon, L	4,282
Honigsfeld, P&F	3,146
24th District	
Waxman, Dem-Inc	106,828
Cowles, Rep	34,723
Green, P&F	3,378
Abrahams, L	2,518

25th District	
Roybal, Dem-Inc	80,425
Reyes, P&F	8,300
Thie, L	5,385
26th District	
Berman, Dem-Inc	121,404
Groderson, Rep	50,821
27th District	
Levine, Dem-Inc	141,396
Galbraith, Rep	61,737
Fulco, L	5,864
28th District	
Dixon, Dem-Inc	104,920
Adams, Rep	26,944
Johnson, L	2,977
Honigsfeld, P&F	2,696
29th District	
Hawkins, Dem-Inc	85,338
Franco, Rep	13,828
Gilmore, L	3,620
30th District	
Martinez, Dem-Inc	69,065
Ramirez, Rep	41,558
Myers, Al	2,590
Goldsworthy, L	1,776
31st District	
Dymally, Dem-Inc	97,518
May, Rep	34,435
Duren, L	3,958
32nd District	
Anderson, Dem-Inc	109,068
Kahn, Rep	47,981
Murdock, P&F	3,855
Denny, L	1,849
33rd District	
Dreier, Rep-Inc	145,071
Gentry, D	55,519
Lightfoot, L	6,389
Noonan, P&F	3,359
34th District	
Torres, Dem-Inc	88,103
House, Rep	48,641
Swinney, L	2,573
35th District	
Lewis, Rep-Inc	175,873
Sweeney, Dem	69,335
Shuman, L	4,713
36th District	
Brown, Dem-Inc	100,559
Stark, Rep	78,737
Valentine, L	3,308
Anderson, Al	3,272
37th District	
McCandless, Rep-Inc	163,698
Pearson, Dem	85,333
Flickinger, L	6,771
38th District	
Dornan, Rep-Inc	83,063
Yudelson, Dem	49,421
McKay, L	3,563
German, P&F	3,383

39th District	
Dannemeyer, Rep-Inc	161,568
Marquis, Dem	49,895
Connelly, L	7,174
40th District	
Cox, Rep	170,640
Lenney, Dem	76,367
Bloxham, L	4,317
Farsai, P&F	3,549
41st District	
Lowery, Rep-Inc	172,831
Kripke, Dem	81,836
Rider, L	4,891
Weber, P&F	4,462
42nd District	
Rohrbacher, Rep	144,017
Kimbrough, Dem	74,745
Rose, P&F	6,309
43rd District	
Packard, Rep-Inc	188,826
Greenebaum, Dem	67,951
Muhe, L	7,014
44th District	
Bates, Dem-Inc	85,315
Butterfield, Rep	51,646
Thompson, L	5,381
45th District	
Hunter, Rep-Inc	154,132
Lebiscopo, Dem	50,414
Willis, L	4,105

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On December 14, 1988, I served the within Supplemental Memorandum of the Members of the California Democratic Congressional Delegation in Support of Motion to Dismiss or Affirm in re: "Robert E. Badham, et al. v. March Fong Eu, et al.," in the United States Supreme Court, October Term 1987, No. 87-1818;

On the Parties in said action, by placing Three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

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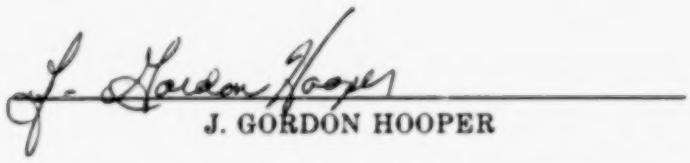
All Parties required to be served have been served.

I certify, under penalty of perjury, that the foregoing is true and correct.

Executed on December 14, 1988, at Los Angeles, California



J. GORDON HOOPER

Supreme Court, U.S.
FILED
DEC 14 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1818

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1988

ROBERT E. BADHAM, et al.,
Appellants,

VS.

MARCH FONG EU, et al.,
Appellees.

On Appeal from the United States District Court for the Northern District of California

SUPPLEMENTAL MOTION OF THE ASSEMBLY OF THE STATE OF CALIFORNIA TO DISMISS OR AFFIRM

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INTRODUCTION

In *Davis v. Bandemer*, 478 U.S. 109, 106 S.Ct. 2797 (1986), as in all the racial gerrymandering cases that preceded it, this Court held that disproportionate election results are insufficient to support a claim of unconstitutional gerrymandering. Recognizing that any proportionality test would dramatically alter our system of government and that redistricting is "a political task for the legislature, a task that should not be monitored too closely" (106 S.Ct. at 2811), this Court has consistently required that plaintiffs seeking judicial intervention show "a history of disproportionate results . . . *in conjunction with strong indicia of lack of political power and the denial of fair representation.*" *Davis, supra*, 106 S.Ct. at 2814, emphasis added.

The dissent below tacitly acknowledges that the plaintiffs in this case have not and cannot make such a showing. Indeed, the dissenter candidly states what the plaintiffs have tried so hard to obscure: that this case is exactly the same as *Davis v. Bandemer*, except that here disproportionality is alleged to have occurred over several elections. The dissenter's—and the plaintiffs'—solution to this gap in the case is to reduce the requirements for judicial intervention to nothing more than allegations of a history of disproportionate results over several elections. This is no solution at all.

The dissent's brief analysis of the alleged disproportionate effects is overstated, seriously flawed, and incomplete. But even if it were not, disproportionate election results are insufficient to support a cause of action. Indeed, under the American electoral system disproportionate election results are the norm, not the exception. They arise as a byproduct of social and constitutional decisions in favor of winner-take-all district elections, one-person-one-vote requirements, and enforcement of the Voting Rights Act.

The message of *Davis v. Bandemer* is a dual message: the plurality sought to protect insular political groups so excluded from the political process that they could not protect themselves; a majority of the Court simultaneously made it clear, however, that judicial review was not to become another tool for the powerful political parties. There is no reason to revisit these holdings here.

ARGUMENT

This Court has held that disproportionate election results—even supposedly grossly disproportionate election results—will not standing alone support a gerrymandering claim.[1]

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[1] The disproportionality alleged here is not particularly large. Republicans hold 40% of California's congressional delegation. Even assuming, arguendo, that a state's congressional delegation is a meaningful unit for purposes of a gerrymandering claim, and even using plaintiffs' votes-to-seats-ratio (a demonstrably false measure), there has been only a five to

Davis v. Bandemer, supra, 106 S.Ct. at 2810; *Whitcomb v. Chavis*, 403 U.S. 124, 153 (1971). As the *Davis* plurality held:

> [A] group's electoral power is not unconstitutionally diminished by the simple fact of an apportionment scheme that makes winning elections more difficult, and a failure of proportional representation alone does not constitute impermissible discrimination under the Equal Protection Clause.
>
> *Davis v. Bandemer, supra*, 106 S.Ct. at 2810.

The Court explained:

> [T]he mere fact that a particular apportionment scheme makes it more difficult for a particular group in a particular district to elect the representatives of its choice does not render that scheme unconstitutionally infirm. This conviction, in turn, stems from a perception that the power to influence the political process is not limited to winning elections.
>
> *Ibid.*

The *Davis* plurality emphasized throughout its opinion that more than unsatisfactory election results must be alleged.[2] *See, e.g.*, 106 S.Ct. at 2809, 2810, 2814. It did so not only by reference to the single election at issue there but also by reference to the race cases in which even decades of disproportionality were

---

ten percent disparity between the percentage of seats won by Republicans and the Republican percentage of the cumulative statewide vote. See Mot. of the Assem. of the State of Calif. to Dismiss or Affirm at p. 20, n. 18.

[2] To the extent the comment of the dissenting judge below that "[i]t is alleged that virtually all competition has been eliminated in congressional elections" (Pet. for Reh. at 2a) raises a question separate from the alleged disproportionality, it has been answered by this Court in *Whitcomb*:

> [W]e have not yet deemed it a denial of equal protection to deny legislative seats to losing candidates, even in those so-called "safe" districts where the same party wins year after year.
>
> 403 U.S. at 153.
>
> *See also Davis, supra*, 106 S.Ct. at 2809, 2814-15; *Gaffney v. Cummings*, 412 U.S. 735, 752-54 (1973).

insufficient to support a claim unless accompanied by a lack of political power and denial of fair representation.

In *Whitcomb v. Chavis*, this Court rejected a claim of racial gerrymandering based upon the distinction between election results and pervasive degradation of political influence:

> The mere fact that one interest group or another concerned with the outcome of Marion County elections has found itself outvoted and without legislative seats of its own provides no basis for invoking constitutional remedies where, as here, there is no indication that this segment of the population is beng denied access to the political system.
>
> 403 U.S. at 154.

After repeatedly emphasizing that a group's defeat at the polls—even repeated defeat at the polls—was not the same as having its voting power "cancelled out" (*e.g., id.* at 153, 156), this Court concluded:

> The short of it is that we are unprepared to hold that district-based elections decided by plurality vote are unconstitutional in either single- or multi-member districts simply because the supporters of losing candidates have no legislative seats assigned to them.
>
> *Id.* at 160.

This distinction between election results and political power led this Court to deny the claims of Indiana Democrats in *Davis v. Bandemer*. There is no reason to abandon the distinction in favor of California Republicans, particularly on the record presented here.

First, plaintiffs' claims of disproportionality are all premised upon the votes-to-seats ratio, a demonstrably false measure. *See* Mot. of Assem. of the State of Calif. to Dismiss or Affirm at pp. 20-22.[3] Moreover, plaintiffs' obsession with the party label of the

---

[3] The dissent's recital of a "history" of disproportionate results in California, starting in 1980, is also seriously flawed. In 1980, the last election under the 1970 plan, when Republicans achieved the greatest number of congressional seats, California districts were at their worst

candidates ignores the "context of California politics". *Storer v. Brown*, 415 U.S. 724, 742 (1974). In California, the individual has long been more important than the party. See Mot. of Assem. of the State of Calif. to Dismiss or Affirm at p. 21.

Second, even accepting plaintiffs' measure, the alleged disproportionality in the 1980s under the challenged plan has been no greater than the disproportionality in the 1970s under a plan developed by court-appointed masters, a plan which plaintiffs held up to the lower court as a prototype of fair districting. *See* Mot. of the Assem. of the State of Calif. to Dismiss or Affirm at pp. 19-20, n. 18.

Third, the disproportionality alleged here does not begin to compare either in scope or duration with the race cases in which minority races often experienced decades of no representation whatsoever yet were denied relief. Mot. of Assem. of the State of Calif. to Dismiss or Affirm at pp. 16-18. Indeed, even with the addition of two Hispanic seats in the congressional districts challenged here, minorities in California enjoy much less proportional representation in the congressional delegation than do Republicans.

Finally, and most importantly, the record in this case demonstrates that California Republicans enjoy considerable political presence and influence at all levels of government. *See* Mot. of Assem. of the State of Calif. to Dismiss or Affirm at pp. 23-25. They are not in any sense "shut out of the political process."

---

under the one-person-one-vote standard. The 1982 elections were conducted under a court-ordered plan, not the one challenged here. *Assembly v. Deukmejian*, 30 Cal.3d 638, 678, *appeal dismissed sub. nom. Republican National Committee v. Burton*, 456 U.S. 941 (1982). Twenty-eight Democrats and seventeen Republicans were elected. In 1984, the first election under the challenged plan, a Republican candidate (Robert Dornan) won a seat that the plaintiffs in this case claimed was gerrymandered in favor of the Democrats. Finally, the reelection of incumbents in most districts is simply a fact of American political life, not a mark of partisan gerrymandering; the voters in this country, with rare exceptions, tend to reelect incumbents. This is equally true in states where congressional districts have not been challenged as gerrymandered.

Davis v. Bandemer, supra, 106 S.Ct. at 2814. Nor has the electoral system been "arranged in a manner that will consistently degrade [their] influence on the political process as a whole." *Id.* at 2810. Assessed "in the light of past and present reality, political and otherwise" (*White v. Regester*, 412 U.S. 755, 769-70 (1973)), plaintiffs' suit is clearly without merit.

To entertain plaintiffs' claim, this Court would not only have to turn its back on established jurisprudence, it would also have to blind itself to the enormous political power exercised by California Republicans. There is no reason in law or common sense to do so.

CONCLUSION

The unprecedented standard for judicial intervention proposed by plaintiffs and the dissenting district court judge would have federal courts second-guessing redistricting plans whenever a series of real or "projected" elections presents disproportionate results. As the plurality said in *Davis v. Bandemer*, "such a low threshold for legal action would invite attack on all or almost all reapportionment statutes" and is "contrary to the . . . conception of an unconstitutional political gerrymander." 106 S.Ct. at 2811.

The appeal should be dismissed or the judgment below summarily affirmed.

December 14, 1988

Respectfully submitted,

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(9)

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No. 87-1818
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Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

APPELLEE MARCH FONG EU'S BRIEF CONCERNING THE JUDICIAL NOTICE OF CALIFORNIA REGISTRATION DATA

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APPELLEE MARCH FONG EU'S BRIEF CONCERNING THE JUDICIAL NOTICE OF CALIFORNIA REGISTRATION DATA

INTRODUCTION

Appellee March Fong Eu, the Secretary of State of California (the "Secretary of State"), files this brief for the limited purpose of replying to the arguments made in "Appellants' Brief In Opposition to Motion of the Assembly of the State of California to Dismiss or Affirm" ("Appellants' Opposition") concerning reliability of California's voter registration data. The Secretary of State has not to date filed briefs in the present appeal; however as California's chief elections officer, the Secretary of State cannot allow the serious distortions contained in Appellants' Opposition to go unanswered.

In the three-judge district court below, appellees the Assembly of the State of California and the Members of the California Democratic Congressional Delegation (collec-

tively "appellees") requested judicial notice of the Secretary of State's periodic "Report of Registration." These reports are issued two or three times a year by the Secretary of State pursuant to California Elections Code Section 607, which provides in part: "(a) Each county clerk shall send to the Secretary of State a summary statement of the number of voters in the county. The statement shall show the total numbers of voters in the county, the number registered as affiliated with each qualified political party, the number registered in non-qualified parties, and the number who declined to state any party affiliation .... (b) The Secretary of State, on the basis of the statements sent by the county clerks ... shall compile a statewide list showing the number of voters, by party affiliations, in the state ..."[1]

Without presenting any evidence to the court below, appellants opposed appellees' request for judicial notice of the Reports of Registration. Appellants argued: "Plaintiffs do not dispute the authenticity of the California Secretary of State's registration figures contained in the Reports of Registration .... The accuracy of those figures, however, is disputed and, *if requested by the court,* plaintiffs will offer evidence to expose their unreliability." Plaintiffs' Memorandum In Opposition to Request for Judicial Notice at 8 (emphasis added). No such evidence was submitted before the December 5, 1986 hearing on the request for judicial notice. At the hearing, the court did not request any evidence on this issue, nor did appellants submit any. After a brief argument, Judge Schnacke, speaking for the court, ruled "the court will take judicial notice of the election results and of the registration statistics." Transcript of Proceedings, December 5, 1986 at 12:23-24.

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[1]California Elections Code Section 607 was formerly codified as California Elections Code Section 6460.

Registration information in California is subject to a variety of statutory procedures to insure its accuracy. These procedures are fully enforced by the Secretary of State.

ARGUMENT

The data set forth in the Reports of Registration is a completely accurate statement of the number of affidavits of registration on file as of the date indicated on the Report and the number of affidavits of registration indicating affiliation with each political party. Thus, as of the close of registration before the November 1986 general election, it is a fact, not subject to dispute, that there were 12,833,920 affidavits of registration on file in the State of California and that of these affidavits, 6,524,496 indicated affiliation with the Democratic Party, 4,912,581 with the Republican Party, 148,356 with the American Independent Party, 53,267 with the Libertarian Party, 44,257 with the Peace and Freedom Party, 32,835 with other parties, and 1,118,128 without any party affiliation. Report of Registration, October 1986 at 4.

I.

CALIFORNIA ROUTINELY PURGES ITS ROLL OF REGISTERED VOTERS WHO ARE NO LONGER ELIGIBLE TO VOTE

To purge the name of a registered voter from the voter registration rolls is a serious matter. It disenfranchises a person who was formerly permitted to exercise his or her constitutional right to vote. While such purging is not to be done lightly, certain names must be deleted from the voter rolls to keep the registration data current. The California Elections Code provides for such purging procedures, which are enforced by the Secretary of State. *See* California Elections Code Sections 701-831.

For example, California Elections Code Section 704 provides that every month, in every county in California, the local registrar of births and deaths must notify the county clerk of all deaths of persons 18 years of age and over and the county clerk must cancel the registration of each deceased voter. These procedures are carefully enforced. Thus the repeated use of the word "deadwood" in Appellants' Opposition to suggest there are dead voters on the rolls in California is seriously misleading.

In addition to purging deceased voters from the rolls, California employs detailed residency confirmation procedures. Before every direct primary election (*i.e.*, June of even numbered years) the county clerk, with certain exceptions, in every county in California mails a nonforwardable postcard or sample ballot to every registered voter to confirm that the voter is still at the address indicated on the voter rolls.[2] California Elections Code Sections 800 and 800.1. If the postcard or sample ballot is returned by the postmaster (or anyone else) indicating the voter is no longer at the address, the voter is purged from the rolls. California Elections Code Sections 800.3 and 801. All cancellations of voter registration are reported to the Secretary of State and reflected in the Report of Registration. California Elections Code Sections 800.3 and 801(c).

In addition to the pre-primary purge discussed above, California also employs a post-election purge of voter rolls. After a general election (*i.e.*, November of even numbered years) every county clerk in every county in California must mail a nonforwardable postcard "to every person who failed to vote at the general election." California Elections Code Section 802. If the nonvoter has moved within the county,

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[2]If a county opts for the postcard method of checking residency, the county, at its option, may choose not to mail postcards to voters who have voted within the six month period before the mailing.

his or her registration is corrected. *Id.* at Section 803(a). If the nonvoter has moved outside the county, the registration is cancelled and the nonvoter notified. *Id.* at Section 803(b). Finally, if the postcard is undeliverable, the registration is cancelled. *Id.* at Section 803(c).

These mandated and carefully enforced purge procedures remove substantial numbers of voters from the rolls. For example, in November of 1986 there were 12,833,920 registered voters in California. In the next statewide tally of voter registration in March of 1987, there were only 12,121,051 registered voters. The decrease in 712,869 voters, 5.5 percent of November total, reflects the post-election purge.

II.

APPELLANTS' STATEMENT THAT THERE IS EVIDENCE IN THE RECORD BELOW TO SHOW UNRELIABILITY IS INCORRECT

Appellants contend that "[t]here is evidence in the record below in which appellee Secretary of State, the named defendant, questions the validity of California's registration data, because of the significant deadwood on the unpurged registration rolls." Appellants' Opposition at 4. This is not correct. There was no evidence submitted to the court below. Appellants, in their opposition to the request for judicial notice, did offer to file a 1981 letter by the Secretary of State to the Joint Legislative Budget Committee, but the letter was never submitted to the Court, to the best of counsel's knowledge.

III.

THE SECRETARY OF STATE'S REMARKS AT THE DEMOCRATIC COMMITTEE MEETING ARE TAKEN GROSSLY OUT OF CONTEXT

Finally, the Secretary of State is compelled to comment on the excerpts of her remarks before the Democratic State Central Committee in February of 1987 contained in Appellants' Opposition. These remarks (which are not part of the record below), were made at a time when she was campaigning for the United States Senate nomination of her party and were designed to motivate her party's registration efforts. They were not made by the Secretary of State in her capacity as Secretary of State, and the excerpted press release was *not* an official press release of the Secretary of State. In addition, these remarks have been taken totally out of context in Appellants' Opposition. They were not meant to attack the reliability of California's voter registration data, but to spur Democratic registration efforts as the quadrennial presidential election approached.

The professional staff of the Elections Division of the California Secretary of State's Office is highly trained and recognized as being among the best, if not the best, in the nation. They have been appointed as expert witnesses in court proceedings in other states, because of their recognized expertise. They enforce the provisions of the California Elections Code and keep all registration data current and up to date, as required by law.

There is no reason, in the record below or elsewhere, why California registration data should not be the subject of judicial notice.

Respectfully submitted,

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PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On December 14, 1988, I served the within Appellee Brief in re: "Robert E. Badham, et al. v. March Fong Eu, et al.," in the United States Supreme Court, October Term 1987, No. 87-1818;

On the Parties in said action, by placing Three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

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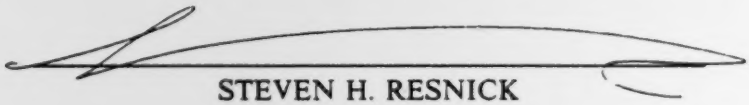
All Parties required to be served have been served.

I certify, under penalty of perjury, that the foregoing is true and correct.

Executed on December 14, 1988, at Los Angeles, California



STEVEN H. RESNICK

No. 87-1818 (10)

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

ROBERT E. BADHAM, *et al.*,

Appellants,

v.

MARCH FONG EU, *et al.*,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

APPELLANTS' RESPONSE TO APPELLEES' SUPPLEMENTAL MEMORANDA

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

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Robert E. Badham, *et al.*,

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v.

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Appellees.

Appeal From The United States District Court For The Northern District Of California

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APPELLANTS' RESPONSE TO APPELLEES' SUPPLEMENTAL MEMORANDA

In its majority decision below, the district court granted with prejudice a motion to dismiss a complaint challenging the egregious gerrymandering of California's congressional districts, without giving the plaintiffs—Appellants here—any opportunity to prove violations of their fundamental constitutional voting rights. The Appellees' Supplemental Memoranda make numerous factual assertions that seek to controvert the allegations of the Complaint and are improperly presented in review of the propriety of dismissal. Appellees seek to obscure a stark reality. Since the

gerrymander took effect, California voters have participated in 180 separate congressional elections. Since the 1982 elections, however, only one congressional district has changed partisan hands.[1]

The Appellees' discussion of District Judge Schnacke's dissenting opinion seeks to trivialize his recognition that the Complaint alleges that congressional election results in California are predetermined as a result of the gerrymander. Appellees' response appears to be "So What? So what if a computer-generated gerrymander can preordain what the congressional election results will be throughout the decade?" The simple answer is that the essence of representative democracy is undermined.

Since this Court granted the Petition for Rehearing in light of the filing of dissenting Judge Schnacke's opinion and separate form of judgment, the 1988 congressional elections have occurred in California. The results substantiate and underscore the seriousness of the allegations of Appellants' Complaint. The 1988 results (see Delegation's Supplemental Memorandum at 1a) emphasize dramatically that the gerrymander of California's 45 congressional districts remains as politically potent—and constitutionally repugnant —towards the end of the decade as it was at the beginning. Not a single seat changed hands and the margins of victory were overwhelming. This was no surprise.

In their Complaint, Appellants alleged, in part, that

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[1] Even that maverick election, which occurred in 1984, is explainable. It was won by a former Republican Congressman whose 1980 district had been dismembered by the 1982 gerrymander; he moved his home to a new district, ran and won in 1984. Complaint, para.26, Jurisdictional Statement App. at 49a.

> . . .A.B. 2X is an intentional, invidious and effective gerrymander designed and functioning to dilute, minimize and/or cancel out the votes and voting strength of Republican voters across the state including plaintiffs and denies Republican voters including plaintiffs their right to fair and effective representation. . . . A.B.2X carves up the state in such a way as to allocate congressional districts to Democrats in numbers far in excess of Democratic voting strength, and to Republicans in numbers far below Republican voting strength. The effect is to control and distort the composition of California's Congressional Delegation throughout the 1980s.

Jurisdictional Statement at 41a.

The 1988 election results confirm that, just as in each congressional election since 1982, the gerrymander has preordained the outcome of the congressional election process. Of the 45 congressional races held in California in 1988, 42 of the 45 races were won by margins of greater than 20 percentage points. On average, each of these 42 candidates won with 72.8 percent of the two-party vote, a margin of 44 percentage points.[2] These dramatic figures provide strong support for the allegations made in the Appellants'

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[2] Based on the figures in the Delegation's Supplemental Memorandum at 1a - 4a. The Delegation attempts to distort the election results with a confusing amalgam of figures and theories in its Supplemental Memorandum, at p.8 n. 5. Even after "correcting for turnout"—whatever that might mean—the result speaks for itself. When non-contested races are eliminated, Democratic candidates received 4.2 percent more of the two-party vote than Republican candidates but nevertheless maintained a 20 percent margin in seats (60 to 40 percent).

Complaint, allegations they were never allowed to prove as they were denied a trial of their case.

Unlike *Davis* v. *Bandemer*, 478 U.S. 109 (1986), this appeal does not merely involve disproportionate results in a single, isolated election. Rather, the California congressional redistricting scheme has dictated electoral results and representation in Congress for the decade of the 1980s. Appellants submit that this persistent degradation of voting rights is the sort recognized by the Court in *Thornburg* v. *Gingles*:

> . . .[t]he *usual predictability* of the majority's success distinguishes *structural* dilution from the mere loss of an occasional election. *Cf. Davis* v. *Bandemer*, [478 U.S. 109] (1986) (opinion of White, J.).

Thornburg, 478 U.S. 30, 106 S. Ct. 2752, 2767 (1986)(emphasis added) (citations omitted). Indeed, Appellees do not and cannot deny the "usual predictability" of California's congressional election process throughout the decade. Nevertheless, the Delegation continues to argue that this case is not materially different from *Davis* v. *Bandemer*. Delegation's Supplemental Memorandum at 2. Appellants have already briefed the salient differences between the record in *Bandemer* and the allegations of the Complaint below.[3] The Delegation has chosen to ig-

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[3] *See* Appellants' Brief in Opposition to Motion of the California Democratic Congressional Delegation to Dismiss or Affirm, filed September 23, 1988. Contrary to the Delegation's claim, Judge Schnacke did not find "duration" to be the only distinction between *Bandemer* and *Badham*; he also recognized that in California "virtually all competition has been eliminated in congressional elections." Petition for Rehearing (And Related Relief) at 2a.

nore this refutation,[4] as well as the fundamental fact that while the plaintiffs in *Bandemer* actually had the opportunity to present their case at trial, the district court, majority below flatly denied appellants any day in court.[5] The three-judge court's majority opinion disposed of the Appellant's complaint on a motion to dismiss, while improperly taking judicial notice of disputed facts.[6]

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[4] The Delegation's Supplemental Memorandum does, however, make the erroneous suggestion that a substantive appeal in the Ninth Circuit is already underway. Delegation's Supplemental Memorandum at 1, n.1. Appellants' precautionary appeal in the Ninth Circuit was stayed pending this Court's action on their Jurisdictional Statement. By the terms of the stay, it was lifted automatically when this Court initially dismissed Appellants' appeal for want of jurisdiction. When this Court granted the petition for rehearing, Appellants immediately advised the Ninth Circuit and no further substantive action has been taken in that Court. No briefs have been filed by either side, nor has any briefing been scheduled.

[5] Subsequent election results also verify that the Indiana redistricting was materially different. In the first elections after redistricting in 1982, 32 Republicans and 18 Democrats were elected to the Indiana Senate, and 57 Republicans and 43 Democrats to the Indiana House of Representatives. *Statistical Abstract of the United States 1988*, p. 246. In 1988, the distribution in the Senate was 26 Republican to 24 Democratic. Even more significantly, in the Indiana House, Indiana Democrats have reached *parity* with Indiana Republicans, with 50 seats apiece. *New York Times*, Nov. 25, 1988, p. A20, col. 3. In California, by contrast, the election results have been immutable throughout the decade.

[6] Appellants do not understand the rationale for the Secretary's Brief on judicial notice of voter registration data. The brief does not address the jurisdictional issues now before this Court. Furthermore, the majority opinion below does not mention or rely upon registration data. The Secretary is also mis-

CONCLUSION

The only way to interpret Judge Poole's opinion below is that members of the major political parties of the United States can never assert rights based on the plurality decision in *Bandemer*. If that was the meaning of *Bandemer*, it has profound implications for the 1990s and beyond, since the California gerrymander will become the model for redistricting into the next century. If that was this Court's intent, it is this Court that should make that determination. The Court should note probable jurisdiction and set the case down for oral argument.

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taken as to the status of the record below. Appellants did not dispute the Secretary's registration figures but objected to judicial notice on the grounds that: (1) Appellees were attempting to use judicial notice as a basis for improper inferences to dispute the allegations of the Complaint; and (2) the Secretary's registration data were unreliable as a measure of voting strength. Although the Secretary's counsel does not recall it, on January 13, 1986, Appellants served on the Secretary (and all other parties) and filed with the Court below the documents offered as proof pertaining to the unreliability. These documents included a December 15, 1981 letter from the Secretary to Honorable Walter W. Stiern, Chairman of the Joint Legislative Budget Committee, concluding that the current method of purging voter registration rolls is "ineffective" and that the rolls contained a "significant amount of 'dead wood'." These comments were made in the Secretary's official capacity years before she decided to run for the U.S. Senate, and are completely consistent with the Secretary's comments during her Senate campaign.

Respectfully submitted,

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December 21, 1988